

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

ERNEST U. SCHROETER, as Trustee in Bankruptcy
of the Estate of B. F. Baum, Bankrupt,

Plaintiff,

vs.

B. F. BAUM, MARGARET D. KLEINSCHMIDT, as
Administratrix of the Estate of Walter Granger Kleinschmidt,
deceased, MARGARET D. KLEINSCHMIDT, individually, et al.,

Defendants.

MARGARET D. KLEINSCHMIDT, as Administratrix
of the Estate of Walter Granger Kleinschmidt, deceased,

Appellant,

vs.

ERNEST U. SCHROETER, as Trustee in Bankruptcy
of the Estate of B. F. Baum, a bankrupt,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Solicitors.

For Appellant Margaret D. Kleinschmidt, as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased:

PILLSBURY, MADISON & SUTRO, Esqs.,

Standard Oil Building,

San Francisco, California.

For Appellee Ernest U. Schroeter, as Trustee in Bankruptcy of the Estate of B. F. Baum, a Bankrupt:

RUPERT B. TURNBULL, Esq.,

433 South Spring Street,

Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL DIVISION

CITATION

United States of America) ss.

The President of the United States of America

To Ernest U. Schroeter, as Trustee in Bankruptcy
of the Estate of B. F. Baum, a bankrupt—

GREETINGS:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the

Ninth Circuit to be holden at the City and County of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the clerk's office of the United States District Court for the Southern District of California, Central Division, wherein Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, is appellant and you are appellee, to show cause, if any there be, why the decree and judgment rendered against the said appellant dated and entered February 23, 1937, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable George Cosgrave, Judge of the District Court of the United States in and for the Southern District of California, this 19th day of March, 1937.

Geo Cosgrave
United States District Judge

[Endorsed]: Receipt of a copy of this Citation is hereby admitted this 19th day of March, 1937. Rupert B. Turnbull Attorney for Ernest U. Schroeter, as Trustee, etc. Filed Mar 20 1937 R. S. Zimmerman, Clerk By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

ERNEST U. SCHROETER as)
Trustee in Bankruptcy of the)
Estate of B. F. Baum, Bankrupt)
) In Equity
 Plaintiff) No. 959-C
)
 vs) BILL IN EQUITY
) TO RECOVER
B. F. BAUM MARGARET D.) AVAILS OF
KLEINSCHMIDT as Adminis-) SALES OF
tratrix of the Estate of Walter) CONCEALED
Granger Kleinschmidt, Deceased;) PERSONAL
MARGARKET D. KLEIN-) PROPERTY
SCHMIDT individually; JOHN) AND TO
DOE RICHARD ROE FIRST) COMPEL
COMPANY, a corporation SEC-) ACCOUNTING.
OND COMPANY, a corporation)
)
 Defendants)

TO THE HONORABLE JUDGES OF THE DIS-
TRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA:

Comes now Ernest U. Schroeter, Trustee in Bank-
ruptcy of and for the Estate of B. F. Baum, Bankrupt,
a citizen of the State of California and residing in the
City of Los Angeles in the State of California, in the
Southern District thereof, and for his cause of complaint
against the above named defendants and each of them
respectfully shows this Honorable Court and alleges:

I.

That the plaintiff herein, Ernest U. Schroeter, is the duly elected, qualified and acting Trustee in Bankruptcy of and for the Estate of B. F. Baum, Bankrupt, and is a resident and a citizen of the State of California, residing in the City of Los Angeles, County of Los Angeles and the Southern District of California. That B. F. Baum, whose full name is Benjamin F. Baum, was adjudicated a bankrupt on his voluntary petition in bankruptcy on the 6th day of November, 1931; that this court duly made, gave and entered its decree adjudicating said Benjamin F. Baum a bankrupt on November 6, 1931; that at the time of the said adjudication of Benjamin F. Baum, Walter Granger Kleinschmidt and Benjamin F. Baum were co-partners and had been continuously for more than six months prior to the date of such adjudication. That said Benjamin F. Baum and Walter Granger Kleinschmidt continued to be co-partners thereafter and up to the time of the death of Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt departed this life and became deceased in the month of February, 1936.

II.

That this is a suit in equity brought under Sections 70 and 70 E of the Bankruptcy Act of the United States of 1898 and amendments thereto, to set aside and void transfers of property consisting of the interest of the bankrupt in and to certain mining properties hereinafter described, which property was transferred by the bankrupt to Walter Granger Kleinschmidt subsequent to the filing of the voluntary bankruptcy of Benjamin F. Baum, and which transfer was made for the purpose of con-

cealing the property from the creditors of Benjamin F. Baum, and which property was taken, retained and held by Walter Granger Kleinschmidt in his name until after the primary administration of the bankrupt's estate, to-wit, the estate of Benjamin F. Baum, and thereupon reconveyed to Benjamin F. Baum, and through the acts of said Benjamin F. Baum and Walter Granger Kleinschmidt, concealed from creditors of Benjamin F. Baum and the trustee in bankruptcy thereof and from the court administering said bankrupt's estate. This is an action to recover the value of said property so transferred in violation of Section 2957, Division 3, part 4, Title 14, Chapter 2, Article 3, of the Civil Code of California, and to compel an accounting by the defendants of all proceeds derived from the sale of the interest of the bankrupt, Benjamin F. Baum, income derived from the operation of the mining property, and for such other relief as to this court may seem just and equitable to grant.

III.

Plaintiff alleges that upon the death of Walter Granger Kleinschmidt, Margaret D. Kleinschmidt as the surviving widow of the deceased, filed her application for letters of administration upon the estate of Walter Granger Kleinschmidt, deceased, and thereafter, on the 16th day of April, 1936, letters of administration were duly, regularly made, given, granted and issued to the defendant Margaret D. Kleinschmidt, on an order duly made by the Superior Court of the State of California in and for the County of Santa Clara. Thereupon Margaret D. Kleinschmidt qualified in the manner required by law and in the manner required by the order appointing her as such administratrix, and on the 20th day of April, 1936 be-

came and was and has been at all times since said date and now is the duly appointed, qualified and acting administratrix of the estate of Walter Granger Kleinschmidt, deceased. That Margaret D. Kleinschmidt is the widow of Walter Granger Kleinschmidt and the sole heir at law of Walter Granger Kleinschmidt.

IV.

That on the 21st day of April, 1936, plaintiff made and executed his creditor's claim which he served upon Margaret D. Kleinschmidt as administratrix of the estate of Walter Granger Kleinschmidt, deceased, and filed with her a creditor's claim made pursuant to the law of the State of California requiring the making of a written creditor's claim, the presentation thereof and the filing thereof as a condition precedent to the commencement of an action against the estate of a deceased person. That said creditor's claim was and is in the form, letters, words and figures as is attached hereto, a copy marked "Exhibit A." Said exhibit is made a part of this bill by reference and incorporated herein as if fully set forth in this pleading. That at the time of the making, serving and filing of said creditor's claim there was also attached thereto a certified copy of the order of this, the District Court of the United States, for the Southern District of California, Central Division, appointing the claimant, Ernest U. Schroeter, as trustee in bankruptcy of the estate of Benjamin F. Baum, bankrupt, and also a certificate by the clerk of this, the District Court of the United States, for the Southern District of California, Central Division, certifying to the fact of the filing of the bond upon qualification given by the claimant, and of the approval by the court of such bond.

V.

And that for more than thirty days prior to the filing of the voluntary bankruptcy petition and the adjudication of Benjamin F. Baum as a bankrupt thereon on the 6th day of November, 1931, and at the time of the filing of said petition and at the time of the adjudication and at the time of the filing of his bankruptcy schedules, Benjamin F. Baum was the owner of an undivided one-half interest in and to a group of mining claims with the water rights appurtenant thereto, commonly known as the Camp Rock Mines situate in the Belleville Mining District in the County of San Bernardino, State of California, and within this judicial District. That said property was and is more particular known and described as:

Royal Placer Claim No. 1, as per description recorded in Book 171, page 64, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 2, as per description recorded in Book 171, Page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 3, as per description recorded in Book 171, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 4, as per description recorded in Book 179, page 65, Mining Records, County of San Bernardino, California

Royal Placer Claim No. 5, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California

Royal Placer Claim No. 6, as per description recorded in Book 171, page 67, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 7, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California

Royal Placer Claim No. 8, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 9, as per description recorded in Book 171, page 69, Mining Records, County of San Bernardino, California

Gold Junction Quartz Claim, as per description recorded in Book 168, page 189, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 1, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California

Gold Bar Claim No. 2, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California;

all of said property being situate in the County of San Bernardino, in the Belleville Mining District State of California;

which property was then and there on the date of bankruptcy, November 6, 1931, and at all the times thereafter and now, of a value of Fifty Thousand Dollars (\$50,000.00)

The plaintiff herein, your petitioner, alleges that immediately prior to the filing of the voluntary petition in bankruptcy by Benjamin F. Baum and in contemplation of such proceeding, Benjamin F. Baum and Walter Granger Kleinschmidt conspired and confederated together one with the other, and with the defendants John Doe,

Richard Roe, First Company, a corporation, and Second Company, a corporation, to defeat, defraud and place beyond the knowledge and the reach of the creditors of Benjamin F. Baum that certain property of the bankrupt, Benjamin F. Baum, hereinbefore referred to as the mining property in the Belleville Mining District, San Bernardino County, California. That as a part of said conspiracy and to carry out and complete the same, and in anticipation of the effect of said bankruptcy petition of Benjamin F. Baum, Benjamin F. Baum, without consideration of any kind, without the passing to him or to his estate of anything of value, conveyed in writing all of his right, title and interest in and to said mining properties, claims, water rights, placer and lode claims and interests, to Walter Granger Kleinschmidt, and Walter Granger Kleinschmidt accepted and took said conveyance and promised and agreed to hold and retain the same for the sole use and benefit of Benjamin F. Baum, and agreed to hold and retain the same until such time as Benjamin F. Baum should have completed his bankruptcy proceeding in this court, and until said Benjamin F. Baum should have been fully examined by his creditors in the bankruptcy proceeding and by the court and the referee thereof in the bankruptcy proceeding, and until Benjamin F. Baum should have obtained his discharge in bankruptcy in said proceeding. It was then and there agreed that upon the happening of such events and after the discharge in bankruptcy of Benjamin F. Baum, Walter Granger Kleinschmidt would, on request, reconvey said undivided one-half interest in and to said mining properties and rights and water rights and locations to Benjamin F. Baum. That said conveyance was made on or about the 7th day

of April, 1932. That Benjamin F. Baum filed his voluntary petition in bankruptcy in this court and was adjudicated thereon, and at the time of the filing of his petition he accompanied the same in triplicate with his schedules consisting of a sworn, signed statement purporting to show all of his debts and all of his assets of every kind and description. That said schedules did not disclose any interest, past, present or future, of Benjamin F. Baum in and to the said mining and water rights theretofore conveyed as aforesaid to Walter Granger Kleinschmidt. That the bankrupt, Benjamin F. Baum, was examined by this court, in the bankruptcy division thereof, and did not disclose to the court, the trustee or to his creditors that he had any interest in and to any of the mining properties, mining rights, water locations or any of the property in the complaint above referred to. The trustee in bankruptcy did not discover that the bankrupt, Benjamin F. Baum, had been the owner of any property, and took possession of no property, and brought no action to recover any property. Benjamin F. Baum applied for and obtained his discharge in bankruptcy and the administration of his estate as a bankrupt was closed on or about the 27th day of June, 1933. That thereafter, and approximately thirty days thereafter, Benjamin F. Baum demanded of and from Walter Granger Kleinschmidt the reconveyance to him of his interest in and to the mining properties and water rights hereinbefore described and Walter Granger Kleinschmidt, without consideration of any kind passing to him, but pursuant to and in compliance with his agreement theretofore made and hereinbefore pleaded, did make a conveyance of an undivided one-half interest of said herein described min-

ing and water properties to Benjamin F. Baum and did deliver the same to Benjamin F. Baum. Thereupon, Walter Granger Kleinschmidt and Benjamin F. Baum, as the joint owners of said property, sold and disposed of the same to a purchaser in good faith who paid therefor to Walter Granger Kleinschmidt for the benefit of Walter Granger Kleinschmidt and Benjamin F. Baum, the sum of Fifty Thousand Dollars (\$50,000.00). That thereafter and for the first time, on or about the 2nd day of January, 1936, the transaction and the nature thereof was called to the attention of creditors of Benjamin F. Baum, and, on petition duly had, this court on the 3rd day of January, 1936, reopened the estate of Benjamin F. Baum for the purpose of administering the assets so concealed, to-wit, the property hereinbefore alleged to have been wrongfully and fraudulently conveyed and reconveyed. That upon said reopening, Ernest U. Schroeter, who had originally been the trustee in the original primary bankruptcy proceeding, was re-elected and re-appointed trustee in bankruptcy of Benjamin F. Baum, and qualified as such by giving his bond and having the same approved, which order approving such bond was made on the 21st day of January, 1936. That the date of the order reopening such bankruptcy proceeding of Benjamin F. Baum was under order of this court the 3rd day of January, 1936. That at the time of the death of Walter Granger Kleinschmidt he had not paid over to Benjamin F. Baum the half interest of Benjamin F. Baum in and to such funds received from the sale of said mining and water properties as hereinbefore described, and Walter Granger Kleinschmidt had in his possession, under his control, and the estate of Walter Granger Klein-

schniadt, deceased, and Margaret D. Kleinschmidt as administratrix thereof, have as an asset of the estate of said decedent, and under their control, care and custody, sums of money the exact amount of which is unascertainable and unknown to the plaintiff at this time, but a sum in excess of Ten Thousand Dollars (\$10,000.00) in cash, which is the interest of Benjamin F. Baum as the avails of the sale of said mining and water properties as originally made for \$50,000.00, and which said sum of \$10,000 or more is yet undistributed. That the estate of Benjamin F. Baum is entitled to such funds and to an accounting concerning all of the moneys received from the sale of said mining property. Your petitioner, the plaintiff herein, alleges that the exact amount of money paid by Walter Granger Kleinschmidt during his life to Benjamin F. Baum on account of the half-interest of Benjamin F. Baum has not been ascertained. Your petitioner, the plaintiff, alleges that no part of the \$25,000.00 representing the half interest of Benjamin F. Baum, was ever paid to the estate of Benjamin F. Baum, bankrupt, the trustee thereof, nor to the creditors thereof, and that said sum of \$25,000.00 was actually received in cash by Walter Granger Kleinschmidt during his lifetime and after the filing of the voluntary petition of Benjamin F. Baum and the judgment of this court adjudicating Baum a bankrupt.

VI.

That the acts of the said Benjamin F. Baum and Walter Granger Kleinschmidt defrauded and prevented the payment to creditors of Benjamin F. Baum through the medium of his estate in bankruptcy and through the medium of the administration of this court, of any dividend to creditors in the matter of Benjamin F. Baum,

bankrupt. Petitioner alleges that there were creditors of Benjamin F. Baum in existence unpaid; that said creditors were unsecured creditors at the time of the conspiracy and confederation hereinbefore alleged, at the time of the making of the conveyances complained of, and at the time of the filing of the voluntary bankruptcy petition of Benjamin F. Baum and the adjudication of this court thereon. That said creditors and each of them have received and have been paid no dividend out of the estate of Benjamin F. Baum; that there came into the hands of the trustee in bankruptcy in the original primary case no funds out of which creditors could, might have been or were paid, and that upon the reopening of this estate no money, property or thing of value has come into the possession of the present trustee, the plaintiff herein. That there have existed at all times mentioned in this complaint and now exist many substantial unsecured creditors of Benjamin F. Baum who have filed and had allowed in the matter of Benjamin F. Baum, bankrupt, their respective claims as creditors, and upon which they have been paid no dividend or thing of value. That at the time of the conveyance of the interest of Benjamin F. Baum to Walter Granger Kleinschmidt of the mining properties hereinbefore referred to, said Benjamin F. Baum was indebted to said various unsecured creditors holding provable claims in excess of \$28,268.43, among others, including the following:

Thomas Haverty Co.	Claim filed 11/30/31	\$3,946.05
Bank of America	" " 12/12/31	9,383.75
J. D. Minister	" " 1/ 2/32	1,279.88
Musto-Keenan Co.	" " 1/ 4/32	43.00

Emil Brown & Co.	"	"	1/ 4/32	2,944.40
Hartford Accident & Indem. Co.	"	"	2/23/32	3,218.78
E. W. Robinson Truck Co.	"	"	4/ 6/32	814.12
Cudahy Packing Company	"	"	4/25/32	6,558.45
C. E. Spencer	"	"	11/25/31	80.00

That as to the aforesaid named creditors and to the other unsecured creditors of the bankrupt, Benjamin F. Baum, the said conveyance and the arrangement and agreement between Walter Granger Kleinschmidt and Benjamin F. Baum and others constituted both a preference and a fraud, and that the bankrupt had no other property with which to pay his liabilities in full. That at the time of the taking of the property by Walter Granger Kleinschmidt, to-wit, by the conveyance herein-before referred to, the said Walter Granger Kleinschmidt knew that said Benjamin F. Baum was insolvent, knew he had no property other than the property conveyed to him, Walter Granger Kleinschmidt, with which to pay his debts, and during all the times from the date of said original conveyance by Benjamin F. Baum to Walter Granger Kleinschmidt, and up to and including the time of the reconveyance thereof of Walter Granger Kleinschmidt to Benjamin F. Baum, the said Kleinschmidt knew of the existence of said bankruptcy proceeding, knew of the failure of Benjamin F. Baum to disclose the knowledge of such transfer to the trustee in bankruptcy or to this court, knew of the non-payment of any dividend to creditors out of the estate of Benjamin F. Baum, and knew of and became a party to the concealment of such facts from the trustee in bankruptcy and from this court.

VII.

That the estate of Walter Granger Kleinschmidt, deceased, and Margaret D. Kleinschmidt as administratrix thereof, has rejected the claim of the plaintiff as filed with the administratrix and in said estate and no part thereof has been paid.

WHEREFORE, the plaintiff prays judgment against the defendants:

(1) For a money judgment in the sum of Twenty-five Thousand Dollars (\$25,000.00), together with interest at the rate of seven per cent (7%) per annum from the 7th day of April, 1932.

(2) That the defendants be required to account to the plaintiff for all the moneys received from the sale of the mining and water properties hereinbefore in this complaint described up to and including the \$25,000.00 interest of the bankrupt, Benjamin F. Baum, in and to which interest the plaintiff claims as an asset of the estate of Benjamin F. Baum, bankrupt.

(3) That the defendants be required to answer in writing specifically the interrogatories to be herein filed by this plaintiff and served upon the defendants in accordance with Equity Rule No. 58, copies of which interrogatories are attached to this bill of complaint.

(4) That the plaintiff be given such other and further relief as to the court may seem just and equitable in the premises.

(5) That plaintiff have and recover all of his costs and disbursements herein.

(6) MAY IT PLEASE THIS HONORABLE COURT to issue its subpoena directed to the said defendants commanding them on a day certain to appear and answer this bill of complaint and to abide by the orders and decrees of this court thereon.

ISAAC PACHT
RUPERT B. TURNBULL
ISAAC PELTON
CLORE WARNE
MILTON M. BLACK

BY Rupert B. Turnbull

Solicitors for Plaintiff

UNITED STATES OF AMERICA)
STATE OF CALIFORNIA) SS
COUNTY OF LOS ANGELES)

Ernest U. Schroeter, being by me first duly sworn, deposes and says that he is the duly elected, qualified and acting Trustee in Bankruptcy in the within action; that he has read the foregoing Bill in Equity and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

Ernest U. Schroeter

Subscribed and sworn to before me this 17th day of June, 1936.

[Seal] Florence Robinson

Notary Public in and for the County of Los Angeles,
State of California

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE
COUNTY OF SANTA CLARA

April 21, 1936

The undersigned, a creditor of Walter Granger Kleinschmidt, deceased, herewith presents his claim against the estate of said deceased, with the necessary vouchers, to Margaret D. Kleinschmidt as Administratrix of said estate, for approval, as follows:

ESTATE OF Walter Granger Kleinschmidt, deceased,
TO Ernest U. Schroeter as Trustee in Bankruptcy of Dr
the Estate of Benjamin F. Baum, Bankrupt.

To one-half of the purchase price of those certain mining properties in the Belleville Mining District, San Bernardino County of California, known as the Camp Rock Mine, which property was owned by Walter Granger Kleinschmidt and Benjamin F. Baum jointly at all times since the acquisition of the property prior to the bankruptcy of Benjamin F. Baum in 1932; was owned by Walter Granger Kleinschmidt and Benjamin F. Baum jointly at all times since said date, and which property was sold by Walter Granger Kleinschmidt and Benjamin F. Baum for the sum of \$50,000.00

This claim is based first on the ground that Walter Granger Kleinschmidt, at the request of the bankrupt, Benjamin F. Baum, took a conveyance of the interest of Benjamin F. Baum and retained the same at the time Benjamin F. Baum filed his voluntary petition in bankruptcy, during all of the period of administration of the Estate of Benjamin F. Baum, a bankrupt; and after the closing of the Estate of Benjamin F. Baum, at the request of Benjamin F. Baum reconveyed to Benjamin F. Baum an undivided one-half interest in said property. That the said conveyance was made for the purpose of concealing the assets of Benjamin F. Baum, particularly his interest in the Camp Rock Mine, from the creditors of Benjamin F. Baum. That the creditors of Benjamin F. Baum and his bankrupt's estate and Ernest U. Schroeter as the Trustee in Bankruptcy upon reopening, as well as the original Trustee in Bankruptcy, have not collected any interest or share of Benjamin F. Baum in and to said property. This claim is also based on the ground that funds from the purchase price of said Camp Rock Mine now remain in the custody, under the control or in the care of the Estate of Walter Granger Kleinschmidt and the Administratrix thereof. The amount of this claim is the sum of \$25,000.00, for which demand is made upon the estate of the deceased and the Administratrix thereof for payment. There is attached to and submitted with this claim a certified copy of the order appointing said claimant as Trustee in bankruptcy; also a certificate of the filing of his bond upon qualification as such Trustee.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION

ERNEST U. SCHROETER)

As Trustee in Bankruptcy of)

the Estate of B. F. Baum,)

Bankrupt)

vs)

)

B. F. BAUM MARGARET) In Equity

D. KLEINSCHMIDT as Ad-) No.

ministratrix of the Estate of)

Walter Granger Kleinschmidt,) INTERROGATORIES

Deceased; MARGARET D.)

KLEINSCHMIDT individu-)

ally; JOHN DOE RICH-)

ARD ROE FIRST COM-)

PANY, a corporation SEC-)

OND COMPANY, a corpo-)

ration)

Defendants

1. Please make a list of the dates and amounts received from the sale of the mining property in Belleville Mining District, County of San Bernardino, State of

California, which property is more particularly described in the complaint.

2. State what, if any, of the \$50,000.00 purchase price is still in escrow and undelivered.
3. State the name of the escrow agent or stake holder and give its or his address.
4. What amount of the purchase price of said mining property above referred to has been actually paid to Benjamin F. Baum or his order?
5. What is the estimated gross value of the estate of Walter Granger Kleinschmidt, deceased?
6. What is the remaining amount of the purchase price of the mining property above described, if any, unpaid?

[Endorsed]: Filed Jun. 18, 1936 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ANSWER TO BILL IN EQUITY

Comes now MARGARET D. KLEINSCHMIDT as administratrix of the estate of WALTER G. KLEINSCHMIDT and MARGARET D. KLEINSCHMIDT individually, and in Answer to the Bill in Equity of the above named plaintiff, and to the complaint therein contained, respectfully shows this Honorable Court, and admits, denies and alleges as follows, to-wit:

I.

Defendant alleges that she has no information nor belief which would enable her to answer certain allegations in Paragraph 1, of said complaint set forth, and basing her denial on such lack of information and belief, denies that ERNEST SCHROETER, is the duly elected, qualified and/or acting Trustee in bankruptcy. Defendant denies that on November 6, 1931, or at any other time or at all, save and except as may be hereinafter specifically admitted and alleges, that said B. F. BAUM and WALTER GRANGER KLEINSCHMIDT, were co-partners, or had been continuously for a period of six (6) months continuously prior to the date of adjudication, or at all. Defendant denies that B. F. BAUM and said WALTER GRANGER KLEINSCHMIDT, continued to be or ever were co-partners up to the time of the death of WALTER GRANGER KLEINSCHMIDT, or at all; Defendant admits and alleges that she is informed and believes and upon said information and belief, alleges that during the time between April 16, 1931, and July 16, 1931, that B. F. BAUM and said WALTER GRANGER KLEIN-

SCHMIDT and others were jointly engaged in the purchase of certain mining claims and locations in said complaint described, but that any and all such relations were terminated and extinguished on and after by reason of the failure on the part of B. F. BAUM to make such payments as were required to allow said B. F. BAUM to participate in and remain in such joint venture.

II.

In answer to Paragraph II, of said complaint, defendant denies that B. F. BAUM had any interest in and to any mining property at any time subsequent to July 16, 1931, or at the time of his adjudication in bankruptcy; denies that said interest, if any, was transferred to WALTER GRANGER KLEINSCHMIDT, subsequent to the filing of the voluntary bankruptcy, or at all, save by operation of law; for the purpose of concealing the property or any property from the creditors of B. F. BAUM, or at all, except for a purpose of clarifying any full and complete title in and to said mining property, which full and complete title, if any, had theretofore passed to WALTER GRANGER KLEINSCHMIDT, by operation of law; denies that any interest in said property was taken, retained and/or held by WALTER GRANGER KLEINSCHMIDT, or any one else, in his name, or at all; denies that through the, or any act of said BENJAMINE F. BAUM and/or WALTER GRANGER KLEINSCHMIDT, any assets were concealed from the creditors of the estate of BENJAMINE F. BAUM, and/or from the Trustee in bankruptcy, and/or from the Court in administrating the defendants bankruptcy estate, or at all.

III.

In answer to Paragraph IV of said petition, defendant denies that for more than thirty (30) days prior to the filing of the voluntary petition in bankruptcy and to the adjudication of defendant in bankruptcy, or at any other time, that B. F. BAUM was the owner of a one-half interest in and to the mining claims and/or water rights described in said complaint; denies, that at any time or at all since the 16th day of July 1931, that defendant was or is the owner of any interest in and to the above described premises; admits that prior to the 16th day of July, 1931, that defendant was or is the owner of a certain 26-2/3 interest in and to said property subject to the terms of a certain conditional sales contract for the purchase thereof, and alleges that the retention of said interest by said B. F. BAUM therein was conditional upon the payment each month of his pro rata share of the purchase price thereof.

Defendant denies that immediately prior to the filing of the bankruptcy petition, or at any other time, B. F. BAUM and WALTER GRANGER KLEINSCHMIDT, or B. F. BAUM and any other person conspired and/or confederated to defeat and/or place beyond the knowledge and/or each of the creditors of BENJAMIN F. BAUM, or any other person, thru certain property referred to in said complaint, or any other property. Defendant denies that as a part of any conspiracy, or to carry out or to complete any conspiracy, and/or in anticipation of the or any effect of any bankruptcy petition of BENJAMIN F. BAUM, and/or without consideration of any kind and/or without the passing to him, or to his estate any thing of value nor for any other

reason of any kind, nature or description, save and except for the clarification of the interest, if any, of WALTER GRANGER KLEINSCHMIDT, and to the property in said complaint described which interest had theretofore passed to said WALTER GRANGER KLEINSCHMIDT, by operation of law, conveyed any right, title and/or interest in and to any mining properties, claims, water rights, places and/or interest to WALTER GRANGER KLEINSCHMIDT, or to any other person; denies that WALTER GRANGER KLEINSCHMIDT, accepted and/or took said or any conveyance and/or promised and/or agreed to hold and/or retain the same or any for the sole or any use and/or benefit of defendant; denies that any agreement was ever entered into that WALTER GRANGER KLEINSCHMIDT was to hold and/or retain any property until said BENJAMIN F. BAUM, should have completed his bankruptcy proceedings or for any other period of time, or at all; denies that it was then and there, or at all, agreed that upon the or any happenings of and/or any event or at any other time, or at all, that WALTER GRANGER KLEINSCHMIDT, would upon request, or at any other time, or at all, reconvey, or convey said or any interest in and to said or any mining, or other property rights and/or location to defendant, or to any other person.

Defendant alleges that she has no information or belief concerning any conveyance made on April 8, 1932, and basing her denial on such lack of information that such or any conveyance was made on or about April 8, 1932.

Defendant denies that after said 27th day of June, 1931, or at any time, or at all, that B. F. BAUM de-

manded of or from WALTER GRANGER KLEINSCHMIDT, the, or any reconveyance to him, or to any other person of his, or any interest in and/or to the, or any mining properties and/or water rights with or without consideration passing to him, or any one else; denies pursuant to and/or in compliance with, or at all with said or any agreement or at all, did make any conveyance of an undivided one-half, or any interest of in and to said or any mining, and/or water properties; denies that any such conveyance was made or delivered to defendant; denies that thereupon or any other time, or at all, WALTER GRANGER KLEINSCHMIDT, and B. F. BAUM, or any other person other than said WALTER GRANGER KLEINSCHMIDT, and acting for himself alone sold and/or disposed of said property to any person; denies that any person paid or agreed to pay to WALTER GRANGER KLEINSCHMIDT, or agent, or otherwise than for himself alone, the sum of FIFTY THOUSAND AND NO/100 (\$50,000) Dollars, or any other sum, or at all.

Defendant admits that at the time of the death of said WALTER GRANGER KLEINSCHMIDT, there has not been paid over to defendant the or any half interest in and to such funds as were received from the sale of the mining properties hereinbefore described; defendant alleges that she has no information nor belief concerning the remainder of the allegations of Paragraph V, and bas-

ing her denial thereon, denies that said WALTER GRANGER KLEINSCHMIDT, had and MARGARET D. KLEINSCHMIDT, as administratrix, or otherwise, has as an asset of said estate and/or under their control, care, and custody any sums of money belonging to the defendant in excess of TEN THOUSAND AND NO/100 (\$10,000) Dollars, or any other sum or at all, but admits that she has been informed and believes that she has certain sums of money belonging to said defendant in an amount not known to her at this time; denies that the estate of BENJAMIN F. BAUM, bankruptcy, or any other person save and except BENJAMIN F. BAUM, individually is entitled to any funds or to any accounting concerning any or all sums of money received from the sale of said or any mining properties; Defendant denies that the sum of TWENTY FIVE THOUSAND AND NO/100 (\$25,000) Dollars, or any other sum or at all, were ever received by WALTER GRANGER KLEINSCHMIDT, on behalf of defendant, and admits that no part of any proceeds of the sale of any of the mining properties in said complaint described were ever paid to the bankruptcy estate of defendant.

V.

Denies that the or any acts of said B. F. BAUM and WALTER GRANGER KLEINSCHMIDT, defrauded and/or prevented the or any payment to creditors of defendant in any manner whatsoever. Defendant has no

information nor belief concerning certain allegations in said Paragraph V. alleged, and basing her denial thereon, denies that there were, or are any creditors of B. F. BAUM after his adjudication in bankruptcy; denies that there was any conspiracy and/or confederation as hereinbefore alleged; denies that there were, or are any creditors unsecured or otherwise at any time since the adjudication of bankruptcy of B. F. BAUM; denies that there have ever, or now do exist any creditors, substantial secured or otherwise since his adjudication in bankruptcy; alleges that any and all creditors are creditors of his bankruptcy estate only, and that all of the claims hereinbefore mentioned are and have been discharged in bankruptcy.

Defendant has now no information nor belief which would enable her to answer certain allegations in said complaint alleged, and basing her denial on that ground denies that at the time of the conveyance by defendant to WALTER GRANGER KLEINSCHMIDT, of any and all of his interest in and to the mining properties in said complaint alleged, which this defendant alleges was by operation of law, that B. F. BAUM was indebted to the creditors in said complaint set forth; denies that as to the creditors named in said complaint or as to any other creditors, or at all, that the said conveyance, or any con-

veyance and/or arrangement and/or agreement constituted any preference and/or fraud, but alleges that the or any interest which defendant had at the time of the conveyance by operation of law of said interest to WALTER GRANGER KLEINSCHMIDT, as aforesaid represented no tangible nor saleable interest, nor property rights; denies that at the time of said conveyance, which this defendant alleges to have been by operation of law, or at any other time prior to the adjudication in bankruptcy of B. F. BAUM, that WALTER GRANGER KLEINSCHMIDT, knew that B. F. BAUM was insolvent and/or that he had no other property with which to pay his debts; denies that any property was ever reconveyed to B. F. BAUM by WALTER GRANGER KLEINSCHMIDT; denies that said WALTER G. KLEINSCHMIDT, knew of the, or any failure on the part of defendant to disclose the knowledge of such transfer to the Trustee in bankruptcy to this Court, and alleges that there was no duty on the part of said B. F. BAUM, or any one else to do so; denies that B. F. BAUM, or WALTER GRANGER KLEINSCHMIDT, or any other person knew of, nor now knows of and/or became a party to the, or any concealment of any facts from the Trustee in bankruptcy, and/or from this Court.

WHEREFORE, defendant prays that judgment be granted against said petitioners and that defendant go hence with her costs.

Kent Blanche

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

KENT BLANCHE being first duly sworn deposes and states:

That he is one of the attorneys for defendant Margaret D. Kleinschmidt.

That he has read the foregoing Answer to Bill in Equity and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

That affiant makes this verification on behalf of said defendant Margaret D. Kleinschmidt for the reason that she is absent from the County of Los Angeles.

Kent Blanche

Subscribed and sworn to before me this 8 day of September, 1936.

[Seal] Vivien Barton

Notary Public in and for said County and State
My Commission Expires May 20, 1938

[Endorsed]: Received copy of Answer this 8th day of Sept. 1936 Rupert B. Turnbull atty for pltff. Filed Sep 8 - 1936 R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

AMENDMENT TO ANSWER

Comes now Margaret D. Kleinschmidt, individually and as administratrix of the estate of Walter Granger Kleinschmidt, deceased, and, first having obtained leave of court, files this her amendment to her answer to the bill in equity heretofore filed in this cause.

I

Paragraph I of said answer is hereby amended by adding thereto the following:

This defendant denies that Walter Granger Kleinschmidt departed this life and became deceased in the month of February, 1936, and in this behalf defendant alleges that said Walter Granger Kleinschmidt died on November 23, 1935.

II

Paragraph II of the answer to said bill in equity is hereby amended by adding thereto the following:

Defendant denies that this is an action to recover the value of certain property transferred in violation of Section 2957, Division 3, Part 4, Title 14, Chapter 2, Article 3, of the Civil Code of California, and in this behalf defendant alleges that said section of said Civil Code does not pertain to transfers of property but solely to mortgages of personal property or crops.

III

Answering the allegations contained in paragraph III of said bill in equity defendant denies that on the 20th day of April, 1936, she became the duly appointed, qualified and acting administratrix of the estate of Walter Granger Kleinschmidt, deceased, and in this behalf defendant avers that she became such administratrix on the 16th day of April, 1936.

Further answering the allegations in said paragraph III of said bill in equity defendant denies that she is the sole heir at law of said Walter Granger Kleinschmidt, deceased, and in this behalf avers that said Walter Granger Kleinschmidt died intestate and left him surviving this defendant, the widow of said Walter Granger Kleinschmidt, and a daughter, Dorothy Kleinschmidt Payne.

IV

Paragraph III of said answer to said bill is amended by striking out the figure "IV" in line 24 on page 2 of said answer and in lieu thereof inserting the figure "V."

Paragraph III of said answer is further amended as follows, to wit:

The words "or is" in line 31 on page 2 are hereby stricken therefrom. The word ", defraud" is hereby inserted after the word "defeat" and before the word "and" in line 7 on page 3 of said answer. The words "defendant, Benjamin F. Baum" are inserted after the word "that" and before the word "as" in line 10 on page 3 of said answer. The word "in" is inserted after the

comma and before the word "and" in line 16 on page 3 of said answer. The words ", if any, of defendant, Benjamin F. Baum," are inserted after the word "interest" and before the word "had" in line 17 on page 3 of said answer, and the comma after the word "Kleinschmidt" and before the word "by" in said line on said page is hereby stricken therefrom. The words ", Benjamin F. Baum" are inserted in line 23 on page 3 of said answer after the word "defendant" and before the semicolon in said line. The figures "1931" in line 2 on page 4 of said answer are stricken and the figures "1933" are inserted in lieu thereof. The words ", Benjamin F. Baum" are inserted after the word "defendant" and before the semicolon in line 10 on page 4 of said answer.

V

Paragraph V of said answer to said bill is amended by adding thereto the following:

The words "In answer to paragraph VI of said bill, this defendant" are inserted before the word "Denies" in line 6 on page 5 of said answer. Paragraph V of said answer is further amended by striking out the figure "V" in line 9 on page 5 of said answer and in lieu thereof inserting the figure "VI." The words ", Benjamin F. Baum," are inserted after the word "defendant" and before the word "to" in line 21 on page 5 of said answer. The words ", Benjamin F. Baum," are inserted after the word "defendant" and before the word "had" in line 28 on page 5 of said answer.

Pillsbury, Madison & Sutro
Attorneys for said Defendant.

STATE OF CALIFORNIA,)
) ss.
County of Los Angeles.)

MARGARET D. KLEINSCHMIDT, being first duly sworn, deposes and says: That she is one of the defendants named in the above entitled action; that she has read the foregoing amendment to answer and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that she believes it to be true.

Margaret D. Kleinschmidt

Subscribed and sworn to before me
this 8th day of February, 1937.

NOTARY PUBLIC

in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Feb 9 - 1937 R. S. Zimmerman,
Clerk By Francis E. Cross Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT, CONCLUSIONS OF LAW

BE IT REMEMBERED, that the above entitled matter having come on regularly for trial before the above entitled court on the 9th day of February, 1937, and the plaintiff, Ernest U. Schroeter, being represented by his counsel Rupert B. Turnbull, and the defendant B. F. Baum being personally present and represented by his counsel of record, Kent Blanche, and the defendant Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and Margaret D. Kleinschmidt individually being represented by her counsel of record, Kent Blanche; and Messrs. Pillsbury, Madison and Sutro, and Mr. Samuel Wright being added as counsel of record for the defendant Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and Margaret D. Kleinschmidt individually; and the parties proceeding to trial without a jury, and consenting to trial by the court without a jury, and evidence oral and documentary having been introduced on behalf of the plaintiff and the plaintiff having rested, and the plaintiff having consented in open court to the dismissal of the action as to the defendant Margaret D. Kleinschmidt in her individual capacity, but not as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased; and the defendants B. F. Baum, and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, having respectively made their motions to dismiss the bill in equity and to enter a judgment and decree in favor of the said defendants and each of them,

and said motions having been heard by the court and the court having denied said motions and each of them, and having made its order requiring the said defendants B. F. Baum, and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, to proceed with their defense of said action, and the said defendants having then produced evidence both oral and documentary, and the defendants and each of them having rested their respective cases, and the matter having been submitted to the court for its decision after the citing of authorities and the arguments with respect to the facts, and the court having announced in open court orally its decision in favor of the plaintiff, Ernest U. Schoeter as Trustee in Bankruptcy of the Estate of B. F. Baum, Bankrupt, and against the defendants B. F. Baum, and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, the court now makes its:

FINDINGS OF FACT

I.

The court finds that the plaintiff, Ernest U. Schroeter, was at the time of the filing of this bill in equity, and still is, the duly elected, qualified and acting trustee in bankruptcy of and for the estate of B. F. Baum, Bankrupt. That the plaintiff is and was a resident and is and was a citizen of the State of California, residing in the City of Los Angeles, County of Los Angeles, and in the Southern District of California. That the defendant B. F. Baum, whose full name is Benjamin F. Baum, was duly adjudicated a bankrupt on the 6th day of November, 1931, and on the 6th day of November, 1931 this court duly and regularly made, gave and entered its order adjudicating Benjamin F. Baum a bankrupt within the meaning and

purview of the National Bankruptcy Act of 1898 and the amendments thereto. That at the time of the making of such adjudication Benjamin F. Baum, the bankrupt, filed his schedules in bankruptcy wherein under oath he purported to set forth in Schedule B a list of all of his assets, real and personal, but which did not disclose the mining property hereinafter described. That at the time of the making of said schedules and the filing thereof on the 6th day of November, 1931, at the time of the making of the decree of adjudication in bankruptcy as to said Benjamin F. Baum, said Benjamin F. Baum was the owner of an interest in a certain group of mining claims with water rights appertaining thereto, commonly known as the Camp Rock Mining property and also as Camp Rock Mines, situate in the Belleville Mining District in the County of San Bernardino, State of California. That the said property was and is more particularly known and described in the plaintiff's bill in equity as follows:

Royal Placer Claim No. 1, as per description recorded in Book 171, page 64, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 2, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 3, as per description recorded in Book 171, page 65, Mining Records County of San Bernardino, California.

Royal Placer Claim No. 4, as per description recorded in Book 179, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 5, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 6, as per description recorded in Book 171, page 67, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 7, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 8, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 9, as per description recorded in Book 171, page 69, Mining Records, County of San Bernardino, California.

Gold Junction Quartz Claim, as per description recorded in Book 168, page 189, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 1, as per description recorded in Book 168, page 183, Mining Records County of San Bernardino, California.

Gold Bar Claim No. 2, as per description recorded in Book 168, page 183, Mining Records County of San Bernardino, California.

all of said property being situate in the County of San Bernardino, in the Belleville Mining District, State of California.

That all the mining property referred to is situate in San Bernardino County, and that the bankruptcy of Benjamin F. Baum was filed at the place of his residence, at Los Angeles, California, and the administration of the estate of Benjamin F. Baum was administered through this court at Los Angeles, California, being referred to a Referee appointed, sitting and acting for and in the County of Los Angeles, California.

II.

The court finds that at the time of the adjudication of Benjamin F. Baum as a bankrupt on the 6th day of November, 1931, Benjamin F. Baum scheduled debts in excess of \$90,000.00, and that in contemplation of said bankruptcy proceedings, which were voluntary on the part of Benjamin F. Baum, he did, on the 12th day of September, 1931, and less than sixty days prior to the filing of his bankruptcy on November 6, 1931, and while he was indebted to creditors in a sum in excess of \$90,000.00, he, the said Benjamin F. Baum, entered into an agreement with Walter Granger Kleinschmidt, who was then a person jointly interested with him in the said mining property hereinbefore described, the Camp Rock Mining Property.

That at said time it was agreed by and between the said Benjamin F. Baum and said Walter Granger Kleinschmidt that Benjamin F. Baum should assign his interest in and to said mining property and his, Benjamin F. Baum's, contractual rights therein and thereto, and convey the same to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt agreed that he would hold the same as the property of Benjamin F. Baum, to and until such time as Benjamin F. Baum should be free of entanglements and obligations of his, the said Benjamin F. Baum's, creditors. That said Walter Granger Kleinschmidt then and there agreed to reconvey said property at a date in the future and at a time when said Benjamin F. Baum should request the same, and at a time when and after Benjamin F. Baum should be free of and from the obligations of his, Benjamin F. Baum's creditors. That on September 12, 1931, Benjamin F. Baum made and

delivered to Walter Granger Kleinschmidt an instrument purporting to assign to Kleinschmidt his interest in the mining property hereinbefore described.

The court finds that thereafter proceedings for the administration of Benjamin F. Baum as a bankrupt were had, that Benjamin F. Baum did not disclose to the trustee in bankruptcy in his estate, to-wit, Ernest U. Schroeter, nor to the Referee in Bankruptcy before whom the bankruptcy proceeding was pending, nor to the creditors of Benjamin F. Baum, that Benjamin F. Baum had an interest or had had any interest in and to the said Camp Rock mining property hereinbefore described, or any contractual or other interest therein or thereto.

That the total assets of the estate of Benjamin F. Baum as administered was less than the sum of \$800.00, and there was paid to the creditors of Benjamin F. Baum, through the medium of his bankruptcy, a dividend of less than one per cent on the dollar of such obligations of Benjamin F. Baum. That Benjamin F. Baum petitioned the court for his discharge, and on the 4th day of April, 1932, the court duly made, gave and entered its order discharging Benjamin F. Baum from his debts, as a bankrupt. The court finds that in the month of February, 1932 and during the time of the administration of the estate of Benjamin F. Baum as a bankrupt, Benjamin F. Baum made, executed and delivered to Walter Granger Kleinschmidt a quitclaim deed attempting to convey and purporting to convey the interest of the bankrupt, Benjamin F. Baum, in and to the Camp Rock Mining property hereinbefore described, to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt accepted said deed and the same was recorded with the County

Recorder of San Bernardino County. That none of said facts was known at said time to the trustee in bankruptcy, nor to the court, nor to the creditors of Benjamin F. Baum. That no order of court was obtained permitting the conveyance of said property. That Benjamin F. Baum informed Walter Granger Kleinschmidt, during the pendency of his bankruptcy administration, that he was a bankrupt, and the said Walter Granger Kleinschmidt knew, during the period of Administration of the estate of Benjamin F. Baum, that Benjamin F. Baum had been adjudicated a bankrupt and that his status was that of a bankrupt.

III.

The court finds that the estate of Benjamin F. Baum was closed and the administration thereof closed in the year 1932, without there being disclosed to the court or to the trustee of said estate, or to the creditors thereof, any information or knowledge concerning the interest of Benjamin F. Baum in and to the said Camp Rock Mining properties hereinbefore described, nor concerning the purported conveyances of the interest of the bankrupt B. F. Baum therein and thereto.

The court finds that in the month of November, 1931 and thereafter, Benjamin F. Baum continued to endeavor to sell the mining properties known as the Camp Rock Mining property hereinbefore described, acting on behalf of himself and Walter Granger Kleinschmidt and at the special instance and request of Walter Granger Kleinschmidt, and four days after the granting of the discharge in bankruptcy to Benjamin F. Baum, Benjamin F. Baum did, to-wit, on the 8th day of April, 1932, succeed in ob-

taining a purchaser for said property who agreed in writing to pay for said Camp Rock Mining properties the total sum of Fifty Thousand Dollars (\$50,000.00); that said purchaser consisted of Frank Llewellyn and Charles Evans.

The court finds that thereafter, by an agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum on one part, and Frank Llewellyn on the other, One Thousand Dollars (\$1,000.00) which had been paid on account of but not in full of the Fifty Thousand Dollar purchase price, was credited to Frank Llewellyn, and Charles Evans as a purchaser was eliminated and a new agreement was entered into and executed between the parties in writing, to-wit, Walter Granger Kleinschmidt as vendor and Frank Llewellyn as purchaser, under the terms of which Walter Granger Kleinschmidt purported to sell, and Frank Llewellyn agreed to buy and pay for the said Camp Rock Mining properties at an agreed price of Forty-nine Thousand Dollars (\$49,000.00). That said instrument was dated the 10 day of May, 1932.

The court finds that all of the Forty-nine Thousand Dollars provided for under the terms of the last mentioned agreement has been paid to Walter Granger Kleinschmidt and the estate of Walter Granger Kleinschmidt, Deceased.

The court finds that on the 15th day of November, 1932, Walter Granger Kleinschmidt made, executed and delivered to B. F. Baum an assignment in writing wherein and whereby said Walter Granger Kleinschmidt agreed to pay Benjamin F. Baum fifty per cent of the amount of moneys received by him from the sale or lease of the Camp Rock Mining properties. The court finds that

Walter Granger Kleinschmidt received a total of Forty-nine Thousand Dollars from the sale of said Camp Rock Mining properties. The court finds that the said conveyance and assignment was made by Walter Granger Kleinschmidt after Benjamin F. Baum had obtained his discharge in bankruptcy from this court in the matter of the bankruptcy proceedings of Benjamin F. Baum and after he had freed himself from the obligations to his, Benjamin F. Baum's creditors, and the said conveyance was made in compliance with, pursuant to and in accordance with the original agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum respecting the return to Benjamin F. Baum of his interests in the Camp Rock Mining property.

IV.

The court finds that it was contemplated between Benjamin F. Baum and Walter Granger Kleinschmidt that there should be paid out of the sales price of the Camp Rock Mining properties to one Frank Murray and his associates, twenty per cent of the profits of the Camp Rock mining deal. That the said Camp Rock mining deal consisted of the acquiring of the Camp Rock Mining properties from Henry C. Stock and Charles Pohl at a purchase price of Twenty-one Thousand, Eight Hundred Dollars (\$21,800.00), the sale thereof for Forty-nine Thousand Dollars (\$49,000.00), leaving a profit of Twenty-seven Thousand, Two Hundred Dollars (\$27,-200.00), and that there should be paid to said Murray twenty per cent of Twenty-seven Thousand, Two Hundred Dollars, or Five Thousand, Four Hundred and Forty Dollars (\$5,440.00); that there should be given a credit, therefore, to the defendants in this proceeding for the Five Thousand, Four Hundred Forty Dollars (\$5,440.00)

to be paid to Murray, leaving Twenty-one Thousand, Seven Hundred Sixty Dollars (\$21,760.00); that Twenty-One Thousand Seven Hundred and Sixty Dollars (\$21,760.00) is the amount received by Walter Granger Kleinschmidt from the sale of the Camp Rock property; that one-half thereof is the sum of Ten Thousand, Eight Hundred and Eighty Dollars (\$10,880.00).

And that therefore, notwithstanding the recital in the assignment of November 15, 1932, that Kleinschmidt was to pay one-half of the money received by him, to-wit, the assignment from Walter Granger Kleinschmidt to Benjamin F. Baum, the court finds that there should be credited to the defendants the said twenty per cent of the profits to be paid to Murray, and that there should also be deducted the amount of money which Walter Granger Kleinschmidt paid to the persons from whom he purchased the mining property, to-wit, Henry C. Stock and Charles Pohl, to-wit, the sum of Twenty-one Thousand Eight Hundred Dollars (\$21,800.00), and the court finds that there was paid to Walter Granger Kleinschmidt the amount remaining, Twenty-one Thousand, Seven Hundred Dollars (\$21,700.00), and that fifty per cent thereof is the sum of Ten Thousand, Eight Hundred Eighty Dollars (\$10,880.00).

The schedule of payments, therefore, is as follows:

To Frank Murray—twenty per cent of the profit, \$27,200.00	\$5,440.00
To Walter Granger Kleinschmidt—the amount remaining after the deduction of the payment to the original vendors Henry C. Stock and Charles Pohl and the payment to Murray	\$21,760.00

That the amount agreed to be paid, therefore, by Walter Granger Kleinschmidt to B. F. Baum is one-half of Twenty-one Thousand, Seven Hundred Sixty Dollars (\$21,760.00), or the sum of.....\$10,880.00

The court finds that none of said sum has been paid by Walter Granger Kleinschmidt, nor by the Estate of Walter Granger Kleinschmidt, nor by Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, to the plaintiff, nor to the estate of Benjamin F. Baum, a bankrupt, and all thereof is due, owing and unpaid, and that there exist no credits, nor offsets, to which the defendants or any of them are or ought to be entitled.

V.

The court finds that Walter Granger Kleinschmidt departed this life and became deceased on the 23rd day of November, 1935. The court finds that thereafter, in proceedings duly and regularly had, Letters of Administration were issued to the defendant Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and that said Letters were issued by the Superior Court of the State of California in and for the County of Santa Clara. That Margaret D. Kleinschmidt qualified in the manner required by law and in the manner required by the order appointing her as such administratrix, and on the 20th day of April, 1936 became, was and has been at all times since, the duly appointed, qualified and acting administratrix of the estate of Walter Granger Kleinschmidt, Deceased.

VI.

The court finds that on the 21st day of April, 1936, within the time allowed by law, the plaintiff executed his

creditor's claim which he served upon Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased. That said claim was in the form as attached to the plaintiff's bill in equity marked "Exhibit A." That said claim was made and executed in the manner provided by the laws of the State of California requiring the making of a written creditor's claim, the presentation thereof and the filing thereof, as a condition precedent to the commencement of an action against the estate of a deceased person. The court finds that the said creditor's claim was and is in the manner provided for by the law of the State of California, that the same was presented within the time allowed by the law of the State of California, that the same was filed within the time allowed by law of the State of California, and that Margaret D. Kleinschmidt as Administratrix filed her rejection of said claim. That this action was filed within the statutory time provided by the laws of the State of California with respect to the commencement of actions against the estate of a deceased person or the administrator or administratrix thereof, on a rejected claim.

VII.

The court finds that for more than sixty days continuously prior to the 6th of November, 1931, Benjamin F. Baum was insolvent. That court finds that the trustee in bankruptcy of the estate of Benjamin F. Baum and the creditors thereof did not discover, nor did it come to their attention, that Benjamin F. Baum had ever had any interest in the Camp Rock Mining Property hereinbefore described, until on or about the 3rd day of January, 1936. Thereupon, in proceedings duly had by a creditor to reopen the estate of Benjamin F. Baum and for a rerefer-

ence thereof for further administration, this court duly made its order on the 3rd day of January, 1936, which order was and is in words, letters and figures as follows, to-wit, a copy:

“IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 17686-M

In the Matter of) ORDER RE-OPENING
) BANKRUPTCY PRO-
BENJAMIN F. BAUM,) CEEDINGS AND
) RE-REFERENCE
 Bankrupt)

“A petitioner herein having filed his petition praying for the re-opening of this estate and its re-reference, on the ground that there is property which was not disclosed to the Bankruptcy Court nor to the Trustee thereof nor to the creditors and alleging that the same should be recovered and administered upon and good cause therefor appearing, it is hereby

“ORDERED, that the estate of the above named bankrupt be, and the same hereby is, re-opened for further proceedings herein and, it is further

“ORDERED, that this matter be, and it hereby is, re-referred to Referee in Bankruptcy, James L. Irwin, with instructions to elect a Trustee, examine the bankrupt, and take such other appropriate proceedings as are necessary for the administration of the property of the estate.

Los Angeles, California, January 3, 1936.

Paul J. McCormick
Judge”

That thereafter an order was duly made, given and rendered re-electing and reappointing Ernest U. Schroeter as trustee in bankruptcy of the estate of B. F. Baum on reopening, and said Ernest U. Schroeter, the plaintiff, prior to the commencement of this action and prior to the filing of his creditor's claim in the matter of Walter Granger Kleinschmidt, Deceased, qualified in the manner provided by law and in the manner provided for in the order so appointing him and electing him on reopening as trustee, and said plaintiff has been at all times, therefore, the duly elected, qualified and acting trustee in bankruptcy of the estate of Benjamin F. Baum, Bankrupt.

VIII.

The court finds that there is not funds in the estate of Benjamin F. Baum, bankrupt, nor in the possession or under the control of the plaintiff to pay the debts of Benjamin F. Baum, nor to pay the creditors' claims which have been filed in the estate of Benjamin F. Baum and which have been allowed by the court. The court finds that among others of said creditors existing during all of the month of September, 1931 and thereafter continuously and now as a creditor of Benjamin F. Baum, was and is Bank of America, having a claim filed and allowed in the estate of Benjamin F. Baum in a sum in excess of Nine Thousand Dollars (\$9,000.00). The court finds among the other creditors, having unsecured claims on file in the estate of Benjamin F. Baum and allowed by the court and remaining unpaid are the following:

Hartford Accident & Indemnity C.	\$3,200.00
J. D. Minister	1,200.00
Bank of America	9,000.00
Cudahy Packing Company	6,500.00

and many others. That said claimants and each of them are unsecured creditors of Benjamin F. Baum, whose claims have been filed and allowed by the court and remain unpaid.

IX.

The court finds that while the original contract of purchase of Camp Rock mining properties was made by and on behalf of Walter Granger Kleinschmidt, B. F. Baum and J. W. Sullivan, that prior to the sale of the property by Kleinschmidt to Frank Llewellyn, the interest of J. W. Sullivan had been eliminated.

And from the foregoing facts the court makes it

CONCLUSIONS OF LAW

The court concludes that the conveyances made by Benjamin F. Baum, both the one in September, 1931 and immediately prior to his bankruptcy, and the one in February 1932 after his bankruptcy, attempting to convey his interest in and to the Camp Rock Mining properties to Walter Granger Kleinschmidt, were made pursuant to and in accordance with an agreement between Walter Granger Kleinschmidt and Benjamin F. Baum to remove said property from the knowledge of the creditors of Benjamin F. Baum, from the knowledge of this court in the bankruptcy proceedings of Benjamin F. Baum, from the trustee in bankruptcy, the plaintiff, and this court. That the agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum was that the interest of the bankrupt Baum should be held by Walter Granger Kleinschmidt until such time as the bankrupt Baum should have cleared himself of his debts and thereupon, upon

demand, an interest or the avails of the sale thereof would be conveyed to Benjamin F. Baum.

The court finds that said agreement was carried out, that the property was concealed and the interest of the bankrupt was concealed from the court, from the creditors of Benjamin F. Baum and the plaintiff, and that the interest of Benjamin F. Baum was reconveyed to him in the form of a promise in writing dated November 15, 1932, by which Walter Granger Kleinschmidt agreed to pay to the bankrupt Baum fifty per cent of the amount received by Walter Granger Kleinschmidt from the sale or lease of the Camp Rock Mining property.

The court concludes that the conveyance of September 12, 1931 by Benjamin F. Baum to Walter Granger Kleinschmidt was made in contemplation of bankruptcy, was made without consideration, and was a fraud upon creditors of Benjamin F. Baum. The court concludes that the conveyance made on the 29th day of February, 1932, attempting to convey by deed, Benamjin F. Baum grantor, to Walter Granger Kleinschmidt, grantee, the Camp Rock mining property, was without consideration, was a void act, and the said conveyance did not pass any title to Walter Granger Kleinschmidt, same having been made and executed after the adjudication of Benjamin F. Baum, a bankrupt, having been made without the knowledge, without the consent of the court, the Referee in Bankruptcy or the Trustee in Bankruptcy, and without an order of the court or the Referee.

The court finds that Walter Granger Kleinschmidt received a total of Forty-nine Thousand Dollars (\$49,000.00) from the sale of the Camp Rock Mining properties hereinbefore described, and that he paid to Henry C. Stock and Charles Pohl, the original vendors of the property, the sum of Twenty-one Thousand, Eight Hundred Dollars (\$21,800.00), leaving a balance in the hands of Walter Granger Kleinschmidt of Twenty-seven Thousand, Two Hundred Dollars (\$27,200.00); that Walter Granger Kleinschmidt was obligated to pay to Frank Murray and his associates twenty per cent of the profit of \$27,200.00, or \$5,440.00, leaving a balance of \$21,760.00. The court finds that the net amount received by Walter Granger Kleinschmidt from the sale of the Camp Rock Mining properties heretofore described is the sum of \$21,760.00.

The court concludes and finds that the interest of Benjamin F. Baum in and to the Camp Rock Mining property herein described was of the value of Ten Thousand, Eight Hundred and Eighty Dollars (\$10,880.00); that Walter Granger Kleinschmidt has collected the sum of Ten Thousand, Eight Hundred and Eighty Dollars (\$10,880.00) and has not paid any part thereof to the plaintiff as trustee in bankruptcy of the estate of Benjamin F. Baum, nor to the estate of Benjamin F. Baum, a bankrupt, and that the estate of Walter Granger Kleinschmidt and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, are indebted to the plaintiff in the sum of Ten Thousand,

Eight Hundred and Eighty Dollars (\$10,880.00); that no offsets exist in favor of the defendants or either of them. That the plaintiff, Ernest U. Schroeter, as trustee in bankruptcy of the estate of B. F. Baum, is entitled to his costs as may be taxed in this action.

That in order to do complete justice between the parties, the court concludes that to clear any possible error or deficiency in the title of the Camp Rock Mines property which has been sold, deeded and conveyed by Walter Granger Kleinschmidt, that the plaintiff Ernest U. Schroeter, as trustee in bankruptcy, should and ought to be required to convey to the purchaser of the Camp Rock property, Frank Llewellyn, all the right, title and interest of the estate of the bankrupt B. F. Baum, and that the decree to be made in this matter so direct.

Let the decree follow in accordance with these findings and conclusions.

Dated at Los Angeles, California, February 23d, 1937.

Geo. Cosgrave

United States District Judge

[Endorsed]: Received copy of the within Findings and Conclusions this 15 day of February, 1937. Kent Blanche, Attorney for deft B. F. Baum. Served in mail also upon Pillsbury, Madison & Sutro. In mail February 15th 1937. See Affidavit of service by R. B. Turnbull. Filed Feb. 23, 1937 R. S. Zimmerman, Clerk By Francis E. Cross, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL
DIVISION

ERNEST U. SCHROETER as)
Trustee in Bankruptcy of the)
Estate of B. F. Baum, Bankrupt)
)
 Plaintiff)
 vs) In Equity
) No. 959-C
B. F. BAUM, MARGARET D.)
KLEINSCHMIDT as Admin-) JUDGMENT
istratrix of the Estate of Walter) AND DECREE
Granger Kleinschmidt, Deceased;)
M A R G A R E T D. KLEIN-)
SCHMIDT individually,)
)
 Defendants)

BE IT REMEMBERED, that the above entitled matter having come on regularly for trial before the above entitled court on the 9th day of February, 1937, and the plaintiff, Ernest U. Schroeter, being represented by his counsel Rupert B. Turnbull, and the defendant B. F. Baum being personally present and represented by his counsel of record, Kent Blanche, and the defendant Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and Margaret D. Kleinschmidt individually being represented by her counsel of record, Kent Blanche; and Messrs. Pillsbury, Madison and Sutro, and Mr. Samuel Wright being added as counsel of record for the defendant Margaret D.

Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and Margaret D. Kleinschmidt individually; and the parties proceeding to trial without a jury, and consenting to trial by the court without a jury, and evidence oral and documentary having been introduced on behalf of the plaintiff and the plaintiff having rested, and the plaintiff having consented in open court to the dismissal of the action as to the defendant Margaret D. Kleinschmidt in her individual capacity, but not as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased; and the defendants B. F. Baum, and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, having respectively made their motions to dismiss the bill in equity and to enter a judgment and decree in favor of the said defendants and each of them, and said motions having been heard by the court and the court having denied said motions and each of them, and having made its order requiring the said defendants B. F. Baum, and Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, to proceed with their defense of said action, and the said defendants having then produced evidence both oral and documentary, and the defendants and each of them having rested their respective cases, and the matter having been submitted to the court for its decision after the citing of authorities and the arguments with respect to the facts, and the court having made and filed its written findings of fact and written conclusions of law, now, therefore,

IT IS HEREBY ORDERED AND DECREED:

I.

That the plaintiff, Ernest U. Schroeter, as Trustee in Bankruptcy of the Estate of B. F. Baum, Bankrupt, have and recover judgment of and from the defendant Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and against the defendant B. F. Baum, in the sum of Ten Thousand, Eight Hundred and Eighty Dollars (\$10,880.00), together with interest thereon at the rate of seven per cent per annum from the date of the entry of this judgment.

II.

That the plaintiff, Ernest U. Schroeter, as Trustee in Bankruptcy of the Estate of Benjamin F. Baum, Bankrupt, have and recover judgment in his favor and against the defendants Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased, and B. F. Baum, for the plaintiff's costs as herein taxed in the sum of \$58.50.

III.

IT IS FURTHER ORDERED AND AGREED that in order to do complete justice between the parties, Ernest U. Schroeter as Trustee in Bankruptcy of the Estate of B. F. Baum, Bankrupt, be and hereby is ordered and instructed to make and execute, as Trustee in Bankruptcy of the Estate of B. F. Baum, Bankrupt, a quitclaim deed conveying any and all right, title and interest of the estate of Benjamin F. Baum, Bankrupt, and any and all right, title and interest of Ernest U. Schroeter as Trustee in Bankruptcy of the Estate of B. F. Baum, Bankrupt, in and to the Camp Rock Mining properties situate in the

Belleville Mining District, County of San Bernardino, State of California, more particularly described as:

Royal Placer Claim No. 1, as per description recorded in Book 171, page 64, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 2, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 3, as per description recorded in Book 171, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 4, as per description recorded in Book 179, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 5, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 6, as per description recorded in Book 171, page 67, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 7, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 8, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 9, as per description recorded in Book 171, page 69, Mining Records, County of San Bernardino, California.

Gold Junction Quartz Claim, as per description recorded in Book 168, page 189, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 1, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 2, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California.

all of said property being situate in the County of San Bernardino, in the Belleville Mining District, State of California;

to Frank Llewellyn; and

IT IS FURTHER ORDERED that said Ernest U. Schroeter cause said quicclaim deed to be recorded in the office of the County Recorder of San Bernardino County, California, within sixty days from the date of the entry of this decree.

Dated at Los Angeles, California, this 23d day of February, 1937.

Geo Cosgrave

United States District Judge

Decree entered and recorded 2/23/37

R. S. Zimmerman Clerk,

By Francis E. Cross Deputy Clerk.

[Endorsed]: Received copy of the within Judgment and Decree this 15th day of February 1937 Kent Blanche Attorney for Deft B F Baum. Served by mail also upon Pillsbury, Madison & Sutro Attorneys for defendants by mail February 15th 1937. See affidavit of service by R. B. Turnbull. Filed Feb 23 1937 R. S. Zimmerman Clerk By Francis E Cross Deputy Clerk.

In the Central Division of the District Court of the
United States, For the Southern District
of California

_____)
ERNEST U. SCHROETER, as)
Trustee in Bankruptcy of the)
Estate of B. F. Baum, bankrupt,)
 Plaintiff,)
 vs.)
)
B. F. BAUM, MARGARET D.) No. 959-C
KLEINSCHMIDT as Admin-)
istratrix of the Estate of Walter)
Granger Kleinschmidt, deceased,)
M A R G A R E T D. KLEIN-)
SCHMIDT individually; JOHN)
DOE, RICHARD ROE, FIRST)
COMPANY, a corporation, SEC-)
OND COMPANY, a corporation,)
 Defendants.)
_____)

STATEMENT OF EVIDENCE ON APPEAL AS
REQUIRED BY EQUITY RULE NO. 75

The following is the statement of evidence on appeal as the same was lodged with the clerk of the above entitled court on May 19, 1937, as amended by the stipulation and order filed herein on July 8, 1937.

In the District Court at Los Angeles, California, before the Honorable George Cosgrave, judge presiding, the trial came on February 9, 1937 and was concluded on February 10, 1937.

(Testimony of Mary Holmes)

The following is the testimony of the witnesses in narrative form:

MARY HOLMES,

witness called by the plaintiff, testified substantially as follows: I am employed as a clerk in the office of Referee Benno Brink, a referee in bankruptcy before this district, and I have produced a file of Benjamin F. Baum, a bankrupt.

(There was offered and received in evidence plaintiff's Exhibit 1 which consisted of the order of the District Court adjudicating Benjamin F. Baum a bankrupt, on November 6, 1931.)

(There was offered and received in evidence plaintiff's Exhibit 2 which consisted of the schedules of the bankrupt as filed at the time of his adjudication in November, 1931. The schedules showed that there were creditors of the bankrupt having provable claims at the date of the bankruptcy aggregating in excess of \$90,000.)

(There was offered and received in evidence plaintiff's Exhibit 3 which consisted of the order of the referee in the Matter of Baum which showed the election and qualification of Ernest U. Schroeter as a trustee in bankruptcy, together with the order of the court approving the trustee's bonds.)

(There was offered and received in evidence plaintiff's Exhibit 4 which consisted of the order closing the estate and showed a dividend paid of less than 1 per cent to creditors.)

(Testimony of R. C. Groner)

(There was offered and received in evidence plaintiff's Exhibit 5 which consisted of the discharge of the bankrupt as granted by the District Court.)

(There was offered and received in evidence plaintiff's Exhibit 6 which consisted of the petition on reopening of the estate and the order of the District Court reopening the case for further administration.)

(There was offered and received in evidence plaintiff's Exhibit 7 which consisted of the order of the referee on the reopening and showed the election and qualification of Ernest Schroeter as trustee on reopening of the estate.)

(There was offered and received in evidence plaintiff's Exhibit 8 which consisted of the order of the referee approving trustee's bonds on his requalification on reopening.)

R. C. GRONER,

witness called by the plaintiff, testified substantially as follows: My full name is R. C. Groner and I am Assistant Cashier of the Bank of America National Trust and Savings Association.

(There was offered and received in evidence plaintiff's Exhibit 9 which consisted of the claim of the Bank of America filed in the bankruptcy proceeding of Benjamin F. Baum for \$9,383.75, which claim was filed December 12, 1931, and was allowed June 23, 1933.)

(Testimony of R. C. Groner)

MR. GRONER:

The Bank of America has an account in the name of Benjamin F. Baum. The claim of the Bank of America against Mr. Baum is founded upon an obligation of Mr. Baum to the Bank created coincidentally with a loan of money by the Bank to Mr. Baum. At the time the claim was filed, the obligation owed by Mr. Baum to the Bank of America had not been paid. Since the filing of the claim the obligation has not been paid and a balance in the amount of \$9,079.33 remains unpaid.

CROSS-EXAMINATION

The unpaid balance of this bill at the present time amounts to \$9,079.33 and is evidenced by the promissory note of H. W. Baum Company. Mr. Benjamin F. Baum signed the note for the company in the following manner: H. W. Baum Company, by B. F. Baum (p. 9). The H. W. Baum Company was a partnership composed of B. F. Baum and H. W. Baum whom I believe to be brothers. I do not know how much property Benjamin F. Baum had at the time he went bankrupt (p. 11).

(There was offered and received in evidence, as plaintiff's Exhibit 10, the original of a certain assignment agreement dated the 22nd day of August, 1931, reported on the same day on the files of the County Recorder of San Bernardino County bearing the certificate of the County Recorder over his official seal.)

There was offered in evidence a certified copy of an agreement certified to by the Recorder of San Bernardino County and bearing the certificate of recordation of

the County Recorder of San Bernardino County over his official seal and signature. Mr. Wright counsel for the defendant, objected to the introduction of the document in evidence on the ground that the same was not the best evidence, and then and there produced from the defendant's files the original of said certified copy and stated that the same was the original.

Thereupon attorney for the plaintiff accepted the original and offered the same in evidence, together with the certificate of recordation of the County Recorder of San Bernardino County showing that said document was recorded August 28, 1931, at 10:45 A. M. in Book 737, page 385, Official Records of San Bernardino County, California.

Counsel for the defendant then objected to the introduction of the document in evidence on the ground that it had not been proven that it had been delivered at any time. The objection was overruled and exception was taken and allowed.

(The exhibit referred to reads in the following words and figures, to wit:)

“ASSIGNMENT

IN CONSIDERATION that BENJAMIN F. BAUM has agreed and does hereby agree to supply one-third (1/3) of the necessary funds to comply with that certain agreement for the sale of mining property executed on the 16th day of April, 1931 by Charles Pohl and Henry C. Stock, as Vendors, and J. W. Sullivan, as Purchaser, said agreement being recorded in Book 710 Page 387 of the Official Records of the County Recorder of the County of San Bernardino, State of California; said agreement being for the sale and purchase of the following described

property situated in the Belleville Mining District, County of San Bernardino, State of California, to-wit:

'Royal Placer Claim No. 1,' 'Royal Placer Claim No. 2,' 'Royal Placer Claim No. 3,' 'Royal Placer Claim No. 4,' 'Royal Placer Claim No. 5,' 'Royal Placer Claim No. 6,' 'Royal Placer Claim No. 7,' 'Royal Placer Claim No. 8' and 'Royal Placer Claim No. 9,' all as situated in Section 28, Township 7 North, Range 3 East, S. B. B. & M. in said County and State;

Also including the following placer claims in said district of said County and State:

'Gold Junction,'
'Gold Bar No. 1'
'Gold Bar No. 2'

Also including that certain placer and water rights claim, containing about 160 acres and known as the 'Sullivan Placer Claim' situated in said Belleville Mining District, said County and State, Section 30, Township 7 North, Range 3 east, S. B. B. & M'

and for other good and valuable consideration, I, J. W. SULLIVAN, do hereby assign, transfer and set over unto BENJAMIN F. BAUM, thirty three and one-third (33-1/3) per cent of all of the right, title and interest of the purchaser, as set forth herein.

(Notarial Seal) (Signed) J. W. SULLIVAN

Subscribed and sworn to before me this 22nd day of August, 1931.

E. M. Sullivan

Notary Public in and for the County of Los Angeles,
State of California.

STATE OF CALIFORNIA,)
County of Los Angeles) ss.

On this 22nd day of August A. D. 1931, before me Victor Russell Hansen, a Notary Public in and for said County and State, personally appeared J. W. Sullivan, known to me, (or proved to me on the oath of Kent Blanche), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notarial Seal)

(Signed) Victor Russell Hansen
Notary Public in and for said County and State.

Recorded Aug 28 1931 10:45 A. M. In Book 737
Page 385 Official Records San Bernardino County, Calif.

Fulton G. Ferand,
County Recorder
By A. R. Schultz, Deputy.

I certify that I have correctly transcribed this document in above mentioned book.

M. Smith, Copyist
M. Kavanaugh."

(There was offered and received in evidence, as plaintiff's Exhibit 11, a document dated the 29th day of February, 1932, showing a recordation of the instrument of July 30, 1932, in the office of the County Recorder of San Bernardino County.)

(The exhibit referred to reads in the following words and figures, to wit:)

"THIS INDENTURE, Made the 29th day of February in the year of our Lord, one thousand nine hundred thirty two between BENJAMIN F. BAUM, party of the first part, and WALTER G. KLEINSCHMIDT, party of the second part,

WITNESSETH, that for and in consideration of the sum of TEN and no/100 Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part do by these presents remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns forever, all that certain lot or parcel of land situate in the Belleville Mining District, County of San Bernardino, State of California, and bounded and particularly described as in location notices filed with the County Recorder of the County of San Bernardino, State of California, as follows:

Royal Placer Claim Number 1, as per description recorded in Book 171, Page 64, Mining Records.

Royal Placer Claim Number 2, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 3, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 4, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 5, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 6, as per description recorded in Book 171, Page 67, Mining Records.

Royal Placer Claim Number 7, as per description recorded in Book 171, page 68, Mining Records.

Royal Placer Claim Number 8, as per description recorded in Book 171, Page 68, Mining Records.

Royal Placer Claim Number 9, as per description recorded in Book 171, Page 69, Mining Records.

Gold Junction Quartz, as per description recorded in Book 168, Page 189, Mining Records.

Gold Bar No. 1, as per description recorded in Book 168, Page 183, Mining Records.

Gold Bar No. 2, as per description recorded in Book 168, Page 183, Mining Records.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To Have and To Hold all and singular the said premises together with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand the day and year first above written.

(Signed) Benjamin F. Baum

STATE OF CALIFORNIA.)
County of Los Angeles) ss.

On this 7th day of April, in the year one thousand nine hundred thirty-two before me, Freda R. Paulson, a Notary Public in and for said County and State, personally appeared BENJAMIN F. BAUM, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged that he executed the same.

WITNESS my hand and official seal the day and year in this certificate first above written.

(Notarial Seal) (Signed) Freda R. Paulson,
Notary Public in and for said County and State

QUITCLAIM DEED INDIVIDUAL BENJAMIN F. BAUM to WALTER G. KLEINSCHMIDT Dated February, 1932. In Book 830, Page 251, Official Records, San Bernardino County, Fulton G. Feraud, County Recorder, By Frank McInerny Deputy.

I certify that I have correctly transcribed this document in above mentioned book. K. Keller, Copyist.

When recorded, please mail this instrument to Security Title Inc. & Gua Co. 530 W 6th St. Los Angeles, California."

(There was offered and received in evidence, as plaintiff's Exhibit 12, instrument dated San Francisco, California, November 15, 1932, made by W. G. Kleinschmidt, and assigning to B. F. Baum 50 per cent of all and any amounts of money received by W. G. Kleinschmidt from the sale or lease of the Camp Rock Placer Mine) (p. 24).

(The exhibit referred to reads in the following words and figures, to wit:) (pp. 25-27)

“San Francisco, California
November 15, 1932

In consideration of one dollar (\$1.00) and other good and valuable consideration, I, the undersigned, W. G. Kleinschmidt, hereby grant and assign to B. F. Baum fifty per cent (50%) of any and all amounts of money received by me from the sale or lease of the Camp Rock Placer Mine situated in San Bernardino County, California, after having deducted, when payable, from such amounts of money certain sums due Frank J. Murray, J. W. Sullivan and certain other parties mentioned in that certain agreement between W. G. Kleinschmidt, B. F. Baum and J. W. Sullivan, dated the twenty-fourth (24th) day of April, 1931. The said Camp Rock Placer Mine is now held under sale contract by Frank Llewellyn and there is due, as of November 15, 1932, from said Frank Llewellyn, under said sale contract, thirty-nine thousand two hundred dollars (\$39,200.).

W. K. Kleinschmidt

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO) SS

On this 15th day of November, 1932, before me, W. W. Healey, a Notary Public in and for the city and county and state aforesaid, residing therein, duly commissioned and sworn, personally appeared W. G. Kleinschmidt, known to me to be the person whose name is subscribed to and who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the city and county and state aforesaid the day and year in this certificate first above written.

(NOTARIAL SEAL)

W. W. Healey

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires August 29, 1936.

Accepted: B. F. Baum

No. 39 'Endorsed' Recorded at Request of Kent Blanche Dec 15 1932 at 10:05 A. M. in Book 857, Page 285, Official Records, San Bernardino County, Calif., Fulton G. Feraud, County Recorder, By A. R. Schultz, Deputy, Fee \$1.00.

Compared

M. Kavanaugh

E. Quinn

— — —

EM

County of San Bernardino,)
State of California) ss.

I, Ted R. Carpenter, County Recorder in and for the County of San Bernardino, State of California, do hereby certify that the foregoing is a full, true and correct copy of the Assignment recorded in book 857 of Official Records page 285 of San Bernardino County Records.

In Witness Whereof, I have hereunto set my hand and affixed my official, this 3rd day of December, 1936.

Ted R. Carpenter, County Recorder
..... Deputy."

(Testimony of Carlton C. Sixbey)

CARLTON C. SIXBEY,

a witness called on behalf of plaintiff, testified substantially as follows: My full name is Carlton C. Sixbey.

(Counsel stipulated that the original agreement of the 18th of August, 1931, so-called Kleinschmidt-De'Elia contract, consisting of two pages, is in the handwriting of Mr. Kleinschmidt and that the signatures of Mr. Kleinschmidt where they occur in two places therein are his signatures [p. 28].)

(It was stipulated that the witness on the stand, Carlton C. Sixbey, could and would identify the signatures as those of W. G. Kleinschmidt, and it was further stipulated that the signatures on Exhibit 13 were the signatures of W. G. Kleinschmidt as they appeared in the two places in the instrument, which reads as follows:

PLAINTIFF'S EXHIBIT 13

"San Francisco, Calif.
August 20, 1931.

Mr. F. J. Murray,
Los Angeles, Calif.

Dear Mr. Murray:

In response to your request that I approve the assignment of interest in the Sullivan purchase agreement, I can not and will not approve such an assignment as this is not in accordance with the agreement which was made at the time we agreed to purchase the property. You can appreciate the difficulties we would encounter in trying to

dispose or operate the property if we had to get the consent of ten or more people for every move we desired to make. We invested our money only on the basis that we would have the right to do what we thought best, but to pay you 20% of any profits from the operation or sale of the property. I believe this is a liberal commission and if any of the parties to which you assigned a part of this commission has opinions to the contrary, I would suggest you refer them to me.

We are supplying all of the money to purchase the property and any expense involved is also paid by us. Under such circumstances we certainly would not permit others to have the right to tell us what we could or could not do. Mr. Sullivan has assigned a one third interest to me and to Mr. Baum, and in addition we have agreed that any two of the three of us can determine what is to be done. If there is anything further in connection with this matter that is not clear let me know.

Very truly yours,

(Signed) W. G. Kleinschmidt")

Mr. Wright objected to the admission on the ground that the letter was incompetent, irrelevant and immaterial; that it was not within the issues of the case and was contradictory to the theory expressed in the complaint, namely, that the interest in question was dated August 20, 1931 (p. 29). The objection was overruled. An exception was taken and allowed.

(There was offered and received in evidence plaintiff's Exhibit 14 consisting of the duplicate original of the claim as filed in the Estate of Walter Granger Kleinschmidt, the claim of the trustee in bankruptcy and rejection of that claim as communicated to the plaintiff by Margaret G. Kleinschmidt under date of June 24, 1936, and which reads as follows:

PLAINTIFF'S EXHIBIT 14

"Receipt of copy of this rejection of claim is hereby acknowledged this 25th day of June, 1936.

(Signed) Rupert B. Turnbull
Attorneys for Claimant

In the Superior Court of the State of California, in and
for the County of Santa Clara

In the Matter of the Estate of)
WALTER G. KLEINSCHMIDT,) No. 20857
also known as Walter Granger Kleinschmidt)
and W. G. Kleinschmidt)
Deceased.)

REJECTION OF CLAIM

To Ernest U. Schroeter as Trustee in Bankruptcy of the Estate of Benjamin F. Baum, a Bankrupt, and Messrs. Pacht, Turnbull, Pelton & Warne, his attorneys:

You and each of you are hereby notified that your claim for the sum of \$25,000 heretofore filed with the County

Clerk of the County of Santa Clara, State of California,
on or about the 3rd day of June, 1936, is hereby rejected
by Margaret D. Kleinschmidt, the administratrix of the
estate of the above mentioned decedent, this 24th day of
June, 1936.

Margaret D. Kleinschmidt
Administratrix of the Estate of Walter G. Klein-
schmidt, Deceased

Pillsbury, Madison & Sutro
Attorneys for Administratrix

No. 20857 Dept.

Superior Court
County of Santa Clara
State of California

In the Matter of the Estate of
WALTER G. KLEINSCHMIDT.

also known as Walter Granger
Kleinschmidt and W. G.
Kleinschmidt,

Deceased.

REJECTION OF CLAIM

Pillsbury, Madison & Sutro
Attorneys at Law
Standard Oil Building San Francisco, Cal.

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF SANTA CLARA

In the Matter of the Estate of)
)
WALTER GRANGER) CREDITOR'S CLAIM
KLEINSCHMIDT)
)
 Deceased.)

April 21, 1936.

The undersigned, a creditor of Walter Granger Kleinschmidt, deceased, herewith presents his claim against the estate of said deceased, with the necessary vouchers, to Margaret D. Kleinschmidt as Administratrix of said estate, for approval, as follows:

ESTATE OF Walter Granger Kleinschmidt, deceased.

TO Ernest U. Schroeter as Trustee in Bankruptcy of the Estate of Benjamin F. Baum, Bankrupt. Dr.

To one-half of the purchase price of those certain mining properties in the Bellville Mining District, San Bernardino County, California, known as the Camp Rock Mine, which property was owned by Walter Granger Kleinschmidt and Benjamin F. Baum jointly at all times since the acquisition of the property prior to the bankruptcy of Benjamin F. Baum in 1932; was owned by Walter Granger Kleinschmidt and Benjamin F. Baum jointly at all times since said date, and which property was sold by Walter Granger Kleinschmidt and Benjamin F. Baum for the sum of \$50,000.00.

This claim is based first on the ground that Walter Granger Kleinschmidt, at the request of the bankrupt, Benjamin F. Baum, took a conveyance of the interest of Benjamin F. Baum and retained the same at the time Benjamin F. Baum filed his voluntary petition in bankruptcy, during all of the period of administration of the Estate of Benjamin F. Baum, a bankrupt; and after the closing of the Estate of Benjamin F. Baum at the request of Benjamin F. Baum reconveyed to Benjamin F. Baum an undivided one-half interest in said property. That the said conveyance was made for the purpose of concealing the assets of Benjamin F. Baum, particularly his interest in the Camp Rock Mine, from the creditors of Benjamin F. Baum. That the creditors of Benjamin F. Baum and his bankrupt's estate and Ernest U. Schroeter as the Trustee in Bankruptcy upon reopening, as well as the original Trustee in Bankruptcy, have not collected any interest or share of Benjamin F. Baum in and to said property. This claim is also based on the ground that funds from the purchase price of said Camp Rock Mine now remain in the custody under the control or in the care of the Estate of Walter Granger Kleinschmidt and the Administratrix thereof. The amount of this claim is the sum of \$25,000.00, for which demand is made upon the estate of the deceased and the Administratrix thereof for payment. There is attached to and submitted with this claim a certified copy of the order appointing said claimant as Trustee in Bankruptcy; also a certificate of the filing of his bond upon qualification as such Trustee.

STATE OF CALIFORNIA, () ss. (INDIVIDUAL
County of Los Angeles () CLAIM)

whose foregoing claim is herewith presented to the
of the estate of said deceased, being duly sworn, says,
that the amount thereof, to-wit, the sum of
Dollars is justly due to said claimant, that no
payments have been made thereon which are not credited,
and that there are no offsets to the same to the knowledge
of the claimant or affiant

Subscribed and sworn to before me day of
..... 193.....

Notary Public in and for said County and State.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles.)
(OTHER THAN INDIVIDUALS)

Ernest U. Schroeter, being first duly sworn, deposes and says: That he is Trustee in Bankruptcy of Estate of Benjamin F. Baum whose foregoing claim is herewith presented to Margaret D. Kleinschmidt, Administratrix of said claim, to-wit, the sum of Twenty-five Thousand on behalf of said (3) Bankrupt Estate. That the amount of said claim, to-wit, the sum of Twenty-five Thousand

Dollars (\$25,000.00) is justly due to the said claimant, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of said affiant.

(Signed) Ernest U. Schroeter,
as Trustee of Estate of Benjamin F. Baum, Bankrupt.

Subscribed and sworn to before me this 23rd day of April, 1936.

Florence Robinson
Notary Public in and for said County and State.

(1) Co-partnership or corporation, as the case may be; insert names of individuals composing partnership; if a corporation, so state, giving name of State in which same was organized.

(2) State fully capacity in which affiant acts. If a member of the firm, say so; if a managing agent, state why it is not sworn to by one of the principals; if an officer of a corporation, state what officer.

(3) Co-partnership or corporation.

No. 20857

Superior Court
State of California
County of Los Angeles

In the Matter of the Estate of
WALTER GRANGER KLEINSCHMIDT, Deceased.
CLAIM OF Ernest U. Schroeter, Trustee

whose post-office address is
711 H. W. Hellman Bldg., Los Angeles, California
For \$25,000.00

PACHT, TURNBULL, PELTON & WARNE
Attorneys for Trustee in Bankruptcy
510 Union Bank Bldg.,
Los Angeles, Calif.

Filed for approval and notice mailed:

..... 193.....

L. E. LAMPTON, County Clerk,
by
Deputy.

Within claim allowed and approved for \$..... this
..... day of 193..... of the Estate.

Allowed and approved for \$..... this day of
..... 193.....

.....
Judge.

The within claim REJECTED this day of.....
..... 193....")

Mr. Wright stipulated that the copy was one sent on
the paper of Pillsbury, Madison & Sutro.

(There was offered and received in evidence as plaintiff's Exhibit 15 a letter of June 2, 1936, to the County Clerk of Santa Clara County, San Jose, California, and endorsement by him of the receipt of the claim.)

(There was offered and received in evidence plaintiff's Exhibit 16 consisting of the order approving and confirming the first and final report in the account of the trustee showing a disbursement of the \$709 that comprised the assets of this estate [p. 38].)

(There was offered and received in evidence as plaintiff's Exhibit 17 the first and final dividend sheet signed by Earle R. Moss, the referee in bankruptcy in the Estate of Benjamin F. Baum, showing the existence of a number of creditors who participated, and which reads as follows:

PLAINTIFF'S EXHIBIT 17

“IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION

In Bankruptcy, No. 17686-M.

PAUL J. ZIEGLER,
700 Lane Mortgage Bldg.,
Los Angeles, Calif.,

E. V. Fallgren Co. Ltd. \$8,336.85

E. H. HOWLETT,
P. O. Box 115,
Los Angeles, Calif.

Cudahy Packing Co., Assigneee of
various claims
as set forth in
said claim,
totaling,

BURTON A. VAN TASSEL,
548 S. Spring St.,
Los Angeles, Calif.,

Hartford Accident & Indemnity Co., 3,218.78

GLEN BEHYMER, and/or B. L. HOYT,
and/or BERTRAND RHINE,
1215 Rives-Strong Bldg.,
Los Angeles, Calif.,

Emil Brown & Co., 2,944.40

E. W. Robinson Truck Co., ,814.12

Musto-Keenan Co., 43.00

BERNARD HEIMENZ

1101 Garland Bldg
Los Angeles, Calif.,

J. D. Minster 1,279.88

C. E. SPENCER & CHAS. J. GRIFFIN

9441 Wilshire Blvd., See Sub. of
Beverly Hills, Calif., Rupert B. Turnbull

C. E. Spencer 80.00

DIRECT

Bank of America Nat'l Trust & Savings Ass'n

c/o Edmund Nelson & Benj I Bloch

910 Bank of America Bldg., \$9,323.15 Prin.

Los Angeles, Calif., 60.60 Int.

Elizabeth M. Sands

914 Georgina Ave.,
Santa Monica, Calif.,

4,000.00 Plus

int. at

8%

Thomas Haverty Co.,
316 E. 8th St.,
Los Angeles, Calif.,

3,946.05

Upon evidence submitted upon the above and foregoing claims, the said claims, and each of them, are hereby allowed for the amounts set forth, with the exceptions above noted. Said exceptions are suspended or disallowed for the amounts set forth, as therein stated.

Dated: June 23, 1933

(Signed) Earl E. Moss,

Referee.

CASH ON HAND FOR DISTRIBUTION \$588.24
REFEREE'S EXPENSE

Indemnity fee	\$39.53
7 certified copies	3.50
3 called meetings re sales	15.00
1 hearing on Petition	1.50
1 hearing on Order to Show Cause	1.50
2 continuances	3.00
Excess Notices	35.40
	—
	99.43

REFEREE'S FILING FEE

1 additional claim filed	.25
--------------------------	-----

NOTARY FEE

Eleanor C. Rose	\$4.00
Florence Robinson	2.00

REPORTER'S FEE

E. B. Bowman	\$—
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APPRAISERS

Crules R. Cheek 2 days \$5
R. M. Crail 2 days \$5
C. M. Henry 2 days \$5 C. M. Henry, expense \$2.00
Chas J. Asche) Appraisers
B. H. Dodt) Phoenix
Joe V. Prochaska) Arizona
5 each

Petition filed November
30, 1932, asking for
\$10.00 each, fees \$.....
and expense for
B. H. Dodt \$2.00

TO BE PAID

John H. A. Campbell, Earned portion of second
year's premium on Trustees Bond \$.....

ALLOWANCES ASKED

Ernest U. Schroeter, Trustee's Fee \$38.37 \$.....
Ernest U. Schroeter, Trustee's office 25.00

Clarence Hansen, Attorney for
Trustee 250.00 75 \$.....

Bicksler, Parke & Catlin, Attorneys
for Bankrupt 50.00 \$.....

(Signed) Earl E. Moss.

Referee

Dated: June 23, 1933.”)

(Counsel representing all parties stipulated that the property described in the schedules as the Camp Rock property was sold for the sum of \$50,000 [p. 40].)

(Counsel representing all parties stipulated that no part of the sum of \$50,000 had been paid to the trustee in bankruptcy of Benjamin F. Baum [p. 41].)

(Counsel representing all parties stipulated that the instrument of April 24, 1931, bore the signatures of Walter G. Kleinschmidt, Benjamin F. Baum and J. W. Sullivan, and thereupon plaintiff offered and there was introduced in evidence plaintiff's Exhibit 18, which reads as follows:

“AGREEMENT

THIS AGREEMENT made and entered into the 24th day of April, 1931, between WALTER G. KLEINSCHMIDT, BENJAMIN F. BAUM and J. W. SULLIVAN,

WITNESSETH, That,

WHEREAS, the said parties have acquired that certain mining property known as Camp Rock Placer Mine, located about twenty-one (21) miles northeast of the Box 'S' Ranch, San Bernardino County, California, being fully described in that certain agreement for sale of mining property recorded in Book 710 page 387 of Official Records in the office of the County Recorder of the County of San Bernardino, State of California; that,

WHEREAS, all parties hereto are desirous of fulfilling the terms of said agreement for sale of mining property and of operating said Camp Rock Placer Mine,

NOW, THEREFORE, in consideration of the premises, and of the mutual promises of the parties hereto,

IT IS HEREBY UNDERSTOOD AND AGREED that the said WALTER G. KLEINSCHMIDT, BENJAMIN F. BAUM and J. W. SULLIVAN, agree to supply in equal proportion the necessary funds to purchase and operate said property.

IT IS UNDERSTOOD AND AGREED that the profits derived from the operation or sale of the above said Camp Rock Placer Mine, or any part thereof, shall be divided and distributed as follows, to-wit:

W. G. Kleinschmidt - 26-2/3
Benjamin F. Baum - 26-2/3
J. W. Sullivan - 26-2/3

and twenty (20) per cent. in eight (8) equal parts to each of the following persons, to-wit:

J. W. O'Neill
B. J. Desmond
F. J. Murray
P. J. Walsh
L. S. Robinson
John Burns
Mrs. John Burns
Mary Crosson

IT IS FURTHER UNDERSTOOD AND AGREED that the said WALTER G. KLEINSCHMIDT, BENJAMIN F. BAUM and J. W. SULLIVAN each agree to supply one-third (1/3) of the necessary funds required to apply on the purchase price, or to operate the property, so that the funds so supplied from said WALTER G. KLEINSCHMIDT, BENJAMIN F. BAUM and J. W.

SULLIVAN, in equal amounts, will equal one hundred (100) per cent. of the funds so required. In the event that any of the said parties fail or refuse to supply his proportion of the required funds, when and as said funds are required as herein set forth, time being the essence of this requirement, then, and in that event, the other parties hereto shall have the right to pay such sums as are required, and in that event, any and all interests owned by said defaulting party in and to said agreement for sale of mining property, or in or to said property, shall be deemed forfeited; provided, however, that any and all moneys paid under and by virtue of said agreement shall be repaid to said defaulting party at the rate of five (5) per cent. of any and all profits produced by said property, after said property has been fully paid for, and good and sufficient deed conveying said property shall have been executed and delivered to the other two parties; or in the event of sale of said Camp Rock Placer Mine, said defaulting party shall be paid at the rate of twenty six and two-thirds (26-2/3) per cent. of the payment made under said sale until he has received an amount equal to the amount of money which he has supplied under this agreement.

IT IS UNDERSTOOD AND AGREED that each party hereto shall furnish such moneys as are required for payments on or before the 15th of the month in which said payment becomes due.

IT IS UNDERSTOOD AND AGREED that any and all moneys supplied by the said Walter G. Kleinschmidt, Benjamin F. Baum and J. W. Sullivan, and all moneys received from the sale of metal recovered from the said Camp Rock Placer Mine, shall be deposited in the Bank of Italy, Seventh and Olvie Streets Branch, Los Angeles,

California, to the joint account of the said Walter G. Kleinschmidt, Benjamin F. Baum and J. W. Sullivan, and instructions issued to the said bank that any and all checks drawn on the said account must be signed by all of the above said parties.

IT IS UNDERSTOOD AND AGREED that in order to provide for payment of current operating expenses of the said Camp Rock Placer Mine, an account shall be established in the Security First National Bank (Seventh and Grand Branch) of Los Angeles, California, in the name of a person selected and appointed by any two of said parties mentioned in this agreement.

IT IS UNDERSTOOD AND AGREED that all funds disbursed from either of the above said bank accounts shall be substantiated by receipted bills or vouchers.

IT IS UNDERSTOOD AND AGREED that any and all profits realized from the operation or sale of said Camp Rock Placer Mine shall be distributed as herein-before provided, at such time and in such amount as is mutually agreed between the parties to this agreement.

IT IS UNDERSTOOD AND AGREED that in order to administer the operations of the said Camp Rock Placer Mine from one source, the parties to this agreement hereby agree and consent to place in the jurisdiction of any one of the said parties to this agreement, this said administration, which shall include the employment of labor at not more than labor market rates unless otherwise mutually agreed upon, the purchase of supplies, tools

and equipment at reasonable prices, and the direction of the mining and milling operations on the Camp Rock Placer Mine. The selection and appointment of this administrator shall be made by any two of the said parties to this agreement.

IT IS UNDERSTOOD AND AGREED that no salaries or wages shall be paid to any of the parties to this agreement unless mutually agreed upon in writing by all of the said parties to this agreement.

IT IS UNDERSTOOD AND AGREED that an account record shall be continually and permanently maintained to show in intelligent detail all receipts and disbursements of funds received and disbursed under this agreement. All received bills and vouchers and all evidences of bank deposits and monthly bank statements shall be permanently retained unless otherwise mutually agreed in writing by all parties to this agreement.

The above said account record and other above-mentioned records shall be maintained by, or under the supervision of any person selected and appointed by any two of the parties to this agreement. It shall be the duty of the said person to issue each month a written statement of account showing the amount of receipts, disbursements, expenses, and losses, or profits for the previous month, and a copy of this statement shall be furnished to each and every one of the parties to this agreement.

IT IS FURTHER UNDERSTOOD AND AGREED that none of the parties hereto may sell, transfer or assign his interest in and to this agreement, or in and to said agreement for the sale of mining property hereinbefore mentioned, unless he has first offered his said in-

terest to the other two parties hereto at the same price which he would receive from the sale, assignment or transfer.

Witness	(Signed)	Walter G. Kleinschmidt
	(Signed)	W. G. Kleinschmidt
Lewis F. Deward	(Signed)	J. W. Sullivan
F. J. Murray	(Signed)	Benjamin F. Baum"

(Counsel representing all parties stipulated that the mining property described in the instruments involved in this case is commonly and popularly known as the Camp Rock Mine [p. 49].)

(Counsel representing all parties stipulated that of the sum of \$50,000, for which the Camp Rock Mine was sold, \$49,000 was paid by Mr. Llewellyn and Mr. Clindestin to Mr. Kleinschmidt [p. 51].)

Whereupon, Mr. Wright, on behalf of Margaret D. Kleinschmidt, as Administratrix of the Estate of Walter Granger Kleinschmidt, deceased, and individually, made a motion to dismiss the cause against her. The court granted the motion with respect to the defendant Margaret D. Kleinschmidt individually and overruled the motion with respect to the defendant Margaret D. Kleinschmidt, as Administratrix of the Estate of Walter Granger Kleinschmidt, deceased.)

(Whereupon, Mr. Wright, excepted to the denial of the motion to dismiss the cause as to Margaret D. Kleinschmidt, as Administratrix of the Estate of Walter Granger Kleinschmidt, deceased, and said exception was allowed.)

(Testimony of Margaret D. Kleinschmidt—Kent Blanche)

MARGARET D. KLEINSCHMIDT,

after being first duly sworn, testified as a witness in her own behalf substantially as follows:

I am one of the defendants in this case and one of the parties in this case. My husband died on November 23, 1935. I was not familiar with any of his business affairs. I did not know anything about this so-called Camp Rock Placer Mine. I knew that he was interested in it. I did not have any knowledge of any transactions leading up to the sale of this mine. I did not know anything about Mr. Baum's bankruptcy. Mr. Kleinschmidt never discussed the details of this bankruptcy with me.

(There was no cross-examination of the witness.)

KENT BLANCHE,

a witness called on behalf of the defendants, being first duly sworn, testified substantially as follows:

My name is Kent Blanche. I am an attorney at law and have been such since April of 1931, down to the present time. During April of 1931, through the entire year, I was acting in the capacity of attorney for Mr. Kleinschmidt concerning certain things to do with Camp Rock Mine. I am familiar with plaintiff's Exhibit 18 in this case. This is a document drawn by me. I revised a previous document to include the various terms that are included here. That document is the original agreement between Mr. Baum, Mr. Kleinschmidt and Mr. Sullivan for the purchase of this property.

(Testimony of Kent Blanche)

(It was stipulated by counsel that a document bearing date April 16, 1931, bore the signatures of Charles Pohl and Henry C. Stock. Whereupon, Mr. Wright offered a document and it was introduced in evidence as defendants' Exhibit A.)

“AGREEMENT FOR SALE OF MINING
PROPERTY.

THIS AGREEMENT, made the 16th day of April, A. D. 1931, between HENRY C. STOCK and CHARLES POHL, both of Los Angeles in Los Angeles County, State of California, hereinafter called the 'VENDORS', and J. W. SULLIVAN of Los Angeles, Los Angeles County, State of California, hereinafter called the 'PURCHASER'

WITNESSTH:-

That in consideration of the covenants and agreements on the part of the purchaser hereinafter contained, the said VENDORS agree to sell and convey to the said PURCHASERS, and the said PURCHASERS AGREE to buy, those certain mining claims and properties located in the County of San Bernardino, State of California to-wit:

ROYAL PLACER CLAIM Number 1;
ROYAL PLACER CLAIM Number 2;
ROYAL PLACER CLAIM Number 3;
ROYAL PLACER CLAIM Number 4;
ROYAL PLACER CLAIM Number 5;
ROYAL PLACER CLAIM Number 6;

(Testimony of Kent Blanche)

ROYAL PLACER CLAIM Number 7;

ROYAL PLACER CLAIM Number 8;

ROYAL PLACER CLAIM Number 9;

and also those certain Quartz Mining claims located and described as GOLD JUNCTION: GOLD BAR number 1 and GOLD BAR Number 2;

all of said mining claims being located in the BELVILLE MINING DISTRICT in the County of San Bernardino, State of California, as said claims are described in the NOTICES OF LOCATION thereof filed in the office of the Recorder of San Bernardino County, State of California, to which said notices of location reference is hereby made for a more full and particular description thereof.

For the sum of TWENTY THOUSAND (\$20,000.00) Dollars, current lawful money of the United States, to be paid as follows, namely: ONE THOUSAND DOLLARS CASH, at the execution of this agreement, of which \$500.00 is to be paid to each of said Vendors; and a ROYALTY of seven and one-half (7-1/2%) per cent of the gross gold produced therefrom each month, payable to each of said VENDORS (being a total royalty of 15%) on the sixteenth day of each calendar month after the date of this agreement; provided, however that the deferred payments shall not be less than five hundred dollars each month to each of said Vendors (or a total of \$1000.00 per month) until the full purchase price of \$20,000.00, to-wit \$10,000.00 to each of the vendors shall have been paid.

And it is mutually covenanted and agreed that the purchaser shall be let into, and have immediate possession of

(Testimony of Kent Blanche)

said mining claims and of all personal property, machinery and appliances thereon which belong to said Vendors; that time shall be of the essence of this contract; and that if the said PURCHASER shall fail to pay the said installments or any of them when due, at the minimum rate of \$500.00 each month to each of the Vendors, and the indebtedness of \$1800.00 owing to Mrs. Emma Heilman within thirty (30) days hereof, the said vendors and each of them shall be released from all obligation, both at law and in equity, to convey said property; and, in such event, the purchaser shall forfeit all right to said property, and all payments theretofore made by him shall be forfeited to the said vendors.

The said Vendors, upon receiving the payments at the time and in the manner hereinbefore specified, and upon payment by the purchaser of said \$1800.00 due to Mrs. Emma Heilman, within thirty (30) days from the date hereof agree to execute and deliver to said purchaser, or his assigns, a good and sufficient deed of conveyance, conveying the title to said property, subject to liens and encumbrances of record on December 10, 1930 and subject to said indebtedness of \$1800.00 due from Henry C. Stock to Mrs. Emma Heilman. Vendors shall, simultaneously with the execution of this agreement, make a joint deed of said property to purchaser, and place the same in escrow with a depositary to be mutually agreed upon, with instructions to deliver the same to purchaser upon full payment of the said purchase price, plus said indebtedness of \$1800.00 owing to said Emma Heilman.

In event this contract is forfeited for default in payments thereon the Vendors shall have the benefit of all

(Testimony of Kent Blanche)

work done on said property by purchasers prior to such default and Vendors may record proof thereof and have the benefit thereon on account of assessment work on such claims.

IN WITNESS WHEREOF the said parties have hereunto set their hands this 16th day of April, 1931.

(Signed) Henry C. Stock J W Sullivan

Vendors

Charles Pohl

Purchaser

STATE OF CALIFORNIA)

) SS.

County of Los Angeles)

On this 16th day of April, 1931, before me, Lewis Cruickshank, personally appeared HENRY C. STOCK, CHARLES POHL and J. W. SULLIVAN, known to me to be the persons whose names are subscribed to the within instrument and severally acknowledged that they executed the same.

IN WITNESS whereof I have hereunto set my hand and affixed my official seal.

(SEAL) (Signed) Lewis Cruickshank

Notary Public in and for the said County and State.

My Commission Expires May 18, 1933"

The signature on an assignment dated September 23, 1931, is the signature of B. F. Baum.

(Testimony of Kent Blanche)

(Whereupon, Mr. Wright offered the assignment in evidence and the same was introduced in evidence as defendants' Exhibit B.)

"ASSIGNMENT"

IN CONSIDERATION that WALTER G. KLEIN-SCHMIDT has agreed and does hereby agree to supply one-third (1/3) of the necessary funds to comply with that certain agreement for the sale of mining property executed on the 16th day of April, 1931, by Charles Pohl and Henry C. Stock, as Vendors, and J. W. Sullivan, as Purchaser, said agreement being recorded in Book..... Page..... of the Official Records of the County Recorder of the County of San Bernardino, State of California; said agreement being for the sale and purchase of the following described property situated in the Belleville Mining District, County of San Bernardino, State of California, towit:

'Royal Placer Claim No. 1', 'Royal Placer Claim No. 2', 'Royal Placer Claim No. 3', 'Royal Placer Claim No. 4', 'Royal Placer Claim No. 5', 'Royal Placer Claim No. 6', 'Royal Placer Claim No. 7', 'Royal Placer Claim No. 8', and 'Royal Placer Claim No. 9', all as situated in Section 28, Township 7 North, Range 3 East, S. B. B. & M. in said County and State;

Also including the following placer claims in said district of said County and State:

'Gold Junction,'
'Gold Bar No. 1'
'Gold Bar No. 2'

(Testimony of Kent Blanche)

Also including that certain placer and water rights claim, containing about 160 acres and known as the 'Sullivan Placer Claim' situated in said Belleville Mining District, said County and State, Section 30, Township 7 North, Range 3 East, S. B. B. & M. and for other good and valuable consideration, I, B. F. BAUM, do hereby assign, transfer and set over unto WALTER G. KLEIN-SCHMIDT, twenty-six and two-thirds (26-2/3%) per cent. of all of the right, title and interest of the purchaser, as set forth herein.

(Signed) B. F Baum

Subscribed and sworn to before me this 23 day of September, 1931.

(Signed) Freda R. Paulson
Notary Public in and for the County of Los Angeles,
State of California.

STATE OF CALIFORNIA,)
) ss.
County of Los Angeles)

On this 23rd day of September, A. D., 1931, before me, Freda R. Paulson, a Notary Public in and for said County and State, personally appeared B. F. Baum, known to me, (or proved to me on the oath of.....), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(Testimony of Kent Blanche)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(NOTARY SEAL)

(Signed) Freda R. Paulson

Notary Public in and for said County and State."

I knew one J. W. Sullivan in his lifetime. He is now deceased. I knew him fairly well. I have not seen him for any length of time. As I recall, he died some time in 1934 or 1935. He is not available to testify in this action at the present time. The signature on the document I have in my hand dated August 22, 1931, is in his handwriting. The acknowledgment to his signature was taken before me as a notary public.

(Whereupon Mr. Wright offered the assignment and it was received in evidence as defendants' Exhibit C.)

“ASSIGNMENT

IN CONSIDERATION that WALTER G. KLEIN-SCHMIDT has agreed and does hereby agree to supply one-third (1/3) of the necessary funds to comply with that certain agreement for the sale of mining property executed on the 16th day of April, 1931, by Charles Pohl and Henry C. Stock, as Vendors, and J. W. Sullivan, as Purchaser, said agreement being recorded in Book 710, Page 387 of the Official Records of the County Recorder of the County of San Bernardino, State of California;

(Testimony of Kent Blanche)

said agreement being for the sale and purchase of the following described property situated in the Belleville Mining District, County of San Bernardino, State of California, to-wit:

‘Royal Placer Claim No. 1,’ ‘Royal Placer Claim No. 2,’
‘Royal Placer Claim No. 3,’ ‘Royal Placer Claim No. 4,’
‘Royal Placer Claim No. 5,’ ‘Royal Placer Claim No. 6,’
‘Royal Placer Claim No. 7,’ ‘Royal Placer Claim No. 8,’
and ‘Royal Placer Claim No. 9’ all as situated in Section
28, Township 7 North, Range 3 East, S. B. B. & M. in
said County and State;

Also including the following placer claims in said district
of said County and State:

‘Gold Junction,’
‘Gold Bar No. 1’
‘Gold Bar No. 2’

Also including that certain placer and water rights claim,
containing about 160 acres and known as the ‘Sullivan
Placer Claim’ situated in said Belleville Mining District,
said County and State, Section 30, Township 7 North,
Range 3 East, S. B. B. & M.’

and for other good and valuable consideration, I, J. W.
Sullivan, do hereby assign, transfer and set over unto
WALTER G. KLEINSCHMIDT, thirty-three and one-
third (33-1/3) per cent of all of the right, title and
interest of the purchaser, as set forth herein.

(Signed) J W Sullivan

(Testimony of Kent Blanche)

Subscribed and sworn to before me this 22nd day of August, 1931.

(Signed) E. M. Sullivan

Notary Public in and for the County of Los Angeles,
State of California.

On this 22nd day of August, A. D., 1931, before me, Victor Russell Hansen, a Notary Public in and for said County and State, personally appeared J. W. Sullivan, known to me, (or proved to me on the oath of Kent Blanche), to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Notary Seal) (Signed) Victor Russell Hansen
Notary Public in and for said County and State."

I made records of the payments made by the parties to the original agreement, Mr. Sullivan, Mr. Baum and Mr. Kleinschmidt. I have these records. My relationship to these gentlemen was that I was acting as attorney for Mr. Kleinschmidt. The document which I have in my hand is in my handwriting and was prepared by me. I prepared it from the records which I then had. These records consisted of my own personal records concerning

(Testimony of Kent Blanche)

payments which I personally had made and information which I had derived from other sources concerning payments which I had not made. Without referring to that document at all, I am able to tell the court what payments were made by the various parties to this action. Referring to that document to refresh my recollection, I am still able to do it. I am not certain when the last payment was made by Mr. Baum for the purchase of the Camp Rock mining property. I know of my own knowledge that no payment was made in October by him, because I personally received the full amount of moneys from Mr. Kleinschmidt and from Mr. Sullivan and made the payments. Prior to that time I know that Mr. Baum had not made one or two payments, or just how many I don't know. He had previously been in default. I don't believe he was in default in July, 1931. To the best of my recollection, his first payment missed was in September, 1931. I know from a great many sources that Mr. Sullivan paid in \$3260, because that was a source of subsequent litigation, and one of the witnesses heretofore was the assignee of that interest. I know that he paid in that amount, and that amount shows a default in November, 1931, on his part, leaving Mr. Kleinschmidt to make the entire payments.

“Q BY MR. WRIGHT: [p. 86] Now, did you have any conversation with Mr. Sullivan about his ability to continue to make these payments?”

(Whereupon, Mr. Turnbull, counsel for plaintiff, objected to the question, and after argument by counsel the same was overruled and an exception was noted and allowed.)

(Testimony of Kent Blanche)

"Q BY MR. WRIGHT: [p. 89] What did he tell you, Mr. Blanche?

A He told me he couldn't make the November payment."

I did not know Mr. Baum's financial condition of my own knowledge in August, 1931.

(Whereupon, Mr. Wright handed the witness a document and counsel for plaintiff stipulated that the instrument bore the signature of Mr. Sullivan.)

I do not know whether Mr. Kleinschmidt received this instrument from Mr. Sullivan.

(Whereupon, Mr. Wright offered the instrument in evidence, to which offer counsel for plaintiff objected on the ground that the document was a self-serving statement concerning the defendant Sullivan and cannot bind the plaintiff in any way, and further that the same was dated after the date of the Baum bankruptcy and can in no way affect the title to the property in question as custodia legis.)

(Whereupon, the same was admitted in evidence as defendants' Exhibit D, and an exception was taken and allowed.)

(Testimony of Kent Blanche)

“EQUITABLE ASSURANCE CO.
313 WALTER P. STORY BUILDING
PHONE VA. 8749
610 SOUTH BROADWAY LOS ANGELES, CALIF.

December 14th, 1931.

Mr. Walter G. Kleinschmidt
San Francisco, Calif.,

Dear Sir:

This is to certify that I am unable to meet my prorata payment in re Camp Rock Mines which is due on the 16th instant and that this is your authorization to make said payment in my behalf and in my stead and that upon you making said payment in my behalf I hereby authorize and acknowledge that our agreement between ourselves regarding said failure on my part to meet my quota when due shall automatically grant you a transfer of all my interest in said property subject to reimbursing me in the event of a sale of said mine as per the terms of our said agreement.

Very truly yours,

(Signed) J W Sullivan

Witness Louis N Elin Jr”

(Whereupon, the court recessed until 1:30 o'clock.)

(Testimony of Kent Blanche)

At the commencement of the trial, Mr. Blanche was again called to the stand.

(Whereupon, it was stipulated by counsel that there was admitted as part of plaintiff's case in chief, plaintiff's Exhibit 19, which was the discharge in bankruptcy as made by the Hon. Paul J. McCormick, on the 4th day of April, 1932, in the matter of Benjamin F. Baum, a bankrupt.)

(Whereupon, it was further stipulated that the following document might be admitted in evidence as plaintiff's Exhibit 20.)

"AGREEMENT FOR SALE OF
MINING PROPERTY.

THIS AGREEMENT, made and entered into by and between WALTER G. KLEINSCHMIDT of the City of San Francisco, State of California, hereinafter called Vendor, and FRANK LLEWELLYN, of the City of Los Angeles, hereinafter called Vendee,

WITNESSETH:

That in consideration of the covenants of the parties hereto hereinafter contained, the said Vendor agrees to sell and convey to the Vendee, and Vendee agrees to purchase those certain mining properties located in the County of San Bernardino, State of California, and more particularly described as follows to wit:

Royal Placer Claim Number 1, as per description recorded in Book 171, Page 64, Mining Records.

(Testimony of Kent Blanche)

Royal Placer Claim Number 2, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 3, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 4, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 5, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 6, as per description recorded in Book 171, Page 67, Mining Records.

Royal Placer Claim Number 7, as per description recorded in Book 171, Page 68, Mining Records.

Royal Placer Claim Number 8, as per description recorded in Book 171, Page 68, Mining Records.

Royal Placer Claim Number 9, as per description recorded in Book 171, Page 69, Mining Records.

Gold Junction Quartz, as per description recorded in Book 163, Page 189, Mining Records.

Gold Bar No. 1, as per description recorded in Book 168, Page 183, Mining Records.

Gold Bar No. 2, as per description recorded in Book 168, Page 183, Mining Records.

The purchase price to be paid for said property shall be in the amount of FORTY-NINE THOUSAND DOLLARS (\$49,000.00) in lawful money of the United States, to be paid by the Vendee to the said Vendor upon the terms as hereinafter stated, to-wit:

(Testimony of Kent Blanche)

One Thousand Dollars (\$1000.00) upon the execution of this agreement;

One Thousand Dollars (\$1000.00) on June 1st, 1932;

Five Thousand Dollars (\$5000.00) on July 1st, 1932, and in installments thereafter at the rate of fifteen per cent (15%) of the gross mineral products produced from said property with a minimum guarantee of One Thousand Dollars (\$1000.00) per month until the full purchase price has been paid.

It is particularly understood and agreed that the terms hereof shall be without grace save and except as regards the payment of June 1st, 1932, with reference to which payment the said Vendee shall have a period of eight (8) days grace. All payments thereafter shall be made on the first day of each and every calendar month.

It is particularly understood and agreed that in the event said Vendee desires to complete the payment of the purchase price of said mining property at any time before the payment thereof becomes due under the terms herein-before set forth, that the same may be done, in which event said Vendee will be allowed a deduction of six per cent (6%) from the then remaining unpaid purchase price.

It is particularly understood and agreed that all title charges will be paid by the Vendee but may thereafter be deducted from the payment falling due under the terms of this agreement out of July 1st, 1932.

(Testimony of Kent Blanche)

It is further understood and agreed that any failure to pay any installment of the purchase price shall constitute an immediate forfeiture on the part of said Vendee, and the said Vendor shall be released from all obligations both at law and in equity, to convey said property, and in such event the Vendee shall forfeit all right to said property and all payments theretofore made by said Vendee shall be forfeited to the said Vendor, and in the event of such forfeiture, said Vendee shall be relieved from all further payments on account of said purchase price.

It is understood and agreed that an accounting of all mineral products shall be continuously and permanently maintained to show in intelligent detail all revenue derived from the operation of said property hereinbefore described, and all Treasury receipts and vouchers shall be permanently retained by the said Vendee. The Vendor will at any time upon request, be furnished with a complete and full accounting of all the revenue derived from the said property, and said Vendor may furthermore verify said accounting with the accounts of said Vendee.

It is further understood and agreed that said Vendee may deposit any and all payments on account of the purchase price with depository in Los Angeles, California, said depository to be designated by the said Vendor.

The said Vendor agrees to convey by proper deeds a good and sufficient marketable title to said property free and clear of any incumbrances whatsoever.

(Testimony of Kent Blanche)

It is particularly understood and agreed that the said vendor does not warrant or guarantee title as to any of the personal property now located on the property herein-before described, but does hereby sell and convey all of his right, title and interest in and to said property, and further agrees to hold the said Vendee free and harmless from any litigation or from the costs thereof, which may arise out of or concerning the title to said personal property, it being fully understood and agreed that should any valid or subsisting claims be advanced against any of said property, that said Vendee may purchase the same or deliver to the real owner thereof at their pleasure.

It is further understood and agreed that said Vendee will pay any and all taxes assessed against said property during the term of this agreement, and will do all necessary assessment work in the time provided by law therefor.

It is further understood and agreed that said Vendor will pay any and all incumbrances now existing against said property within a sufficient time as to not hazard the interests of said Vendee.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10th day of May, 1932.

VENDOR

(Signed) Frank Llewellyn
Vendee

(Testimony of Kent Blanche)

STATE OF CALIFORNIA,)
) ss.
County of Los Angeles)

On this 18th day of May, A. D., 1932, before me, Jewell B. Hudson, a Notary Public in and for said County and State, personally appeared Frank Llewellyn, known to me, (or proved to me on the oath of.....), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL) (Signed) Jewell B. Hudson
Notary Public in and for said County and State."

FURTHER TESTIMONY BY

MR. BLANCHE.

I am familiar with the action entitled Kleinschmidt vs. Grubl. I was one of the attorneys of record in that case. I represented Mr. Kleinschmidt in that case. The nature of that case was that these Camp Rock placer claims and the Quartz claims, in 1932 or 1933, were jumped by a number of people headed by Grubl, and an action was brought in the Superior Court of San Bernardino County for the purpose of acquiring title as against these claim jumpers. At that time these claim jumpers were attacking the original title of Mr. Kleinschmidt on the basis that his original title was defective for various reasons, such as the original locations having included too much terri-

(Testimony of Kent Blanche)

tory, improper location notices having been filed, and improper descriptions. The subject matter of that action was the very property in dispute in this case.

(Whereupon, counsel offered a certified copy of the judgment in the case of Kleinschmidt v. Grubl in evidence and an objection to its introduction was sustained.)

FURTHER TESTIMONY BY

MR. BLANCHE.

Prior to October, 1931, I did a few preliminary things relating to the Camp Rock Mine transaction for Mr. Kleinschmidt and from that time on I acted more or less in a general capacity for Mr. Kleinschmidt. Mr. Kleinschmidt at no time or from the time I acted for him made any statement to me that he had conspired and agreed with Baum or anybody else to cheat or defraud Baum's creditors. Mr. Baum did not make any such statement to me. I never had of my own knowledge any reason to suspect that any of the transactions which we have gone into here this morning were done for the purpose of defrauding the trustee in bankruptcy or Mr. Baum's creditors, and I am convinced they were not made for that purpose. These gentlemen, during this whole transaction, were perfectly free in discussing their matters with me and I was familiar with everything they did. I knew of the existence of all these documents at the time. These assignments were recorded at my request. When these assignments were recorded, I did not know that Mr. Baum was going through bankruptcy. I did not act for him in his bankruptcy matters.

(Testimony of Kent Blanche)

CROSS-EXAMINATION

BY MR. TURNBULL

I did not suspect anything was wrong about these things. I have been an attorney since November, 1927. I knew that Mr. Baum attained the status of a bankrupt about November, 1931, but when that knowledge came to me, I don't recall. I knew that he executed a quitclaim deed to Mr. Kleinschmidt after his bankruptcy. The document I am referring to is plaintiff's Exhibit 11, and is an instrument dated February 29, 1932. I knew of the recording of the deed which I prepared. At that time my knowledge was rather indefinite as to the date Mr. Baum had been declared a bankrupt, but it is my opinion now that I then knew that he had previously been adjudicated, or was mixed up in some bankruptcy proceedings. I am familiar with section 70 of the Bankruptcy Act that title to all property of choses in action passes to a trustee in bankruptcy if he is adjudicated if he has any title. The first time that I ever acted specifically as attorney for Mr. Baum was when I called you [Mr. Turnbull] in regard to a continuance of a hearing, Mr. Baum having been subpoenaed in Salinas to appear in this court to take a deposition after the reopening of his bankruptcy discharge. We got a continuance of at least a month. Prior to that time I never discussed anything with him regarding the Camp Rock Mine so that I felt justified in sending a bill.

(Testimony of Kent Blanche)

(Whereupon Mr. Turnbull showed the witness a letter purporting to be written by him on December 10, 1932.)

This letter is in my handwriting. This is my signature and this is my letterhead. I would say that I wrote the letter and sent it to the person to whom it was addressed. I would not say that this refreshes my memory that I was acting for Mr. Baum in 1932. I do not recall whether the letter refers to an assignment of certain interests Mr. Murray had to receive profits in and to that which he had assigned to Mr. Baum, and was subsequently assigned to him.

(Whereupon the letter was offered and admitted in evidence as plaintiff's Exhibit 21.)

[The letter is addressed to Mr. Frank Murray, 524 Wilcox Building, Los Angeles, and dated December 10, 1932. It reads:]

"Mr. Murray:

This is to advise you that I have received word from Mr. Kleinschmidt that you will not receive the \$75.00 this month as expected, as Mr. Baum had objected to the payment until the matter of the interest had been taken care of.

Very truly yours,

(Signed) Kent Blanche."

(Whereupon the witness stipulated on behalf of his client that photostats of the exhibit and the writing on the reverse side may be used in evidence.)

(Testimony of Kent Blanche)

I do not know who wrote this on the reverse side of the letter. I don't feel qualified to recognize Mr. Baum's signature. I have never seen it before.

(Whereupon, it was stipulated that Mr. Baum, who was in court, stated that it was his signature [p. 118].)

(Whereupon, the court allowed counsel to have the photostat marked and withdraw the original.)

I do not know how this got on the back of my letter. It wasn't there when I wrote it.

(Whereupon there was offered in evidence plaintiff's Exhibit 22, and counsel for defendants Baum and Kleinschmidt objected to the introduction of the same and said objections were overruled and the same was admitted in evidence.)

PLAINTIFF'S EXHIBIT 22.

“March 1st, 1933.

“Murray:

“Llewellyn has a thirty-day extension from March 1st, 1933. If no payment is made on April 1st, we be willing to accept \$13,000 net cash for property. All interests, etc., Sullivan and 20% profits to be paid by you. If any cash settlement with Llewellyn is made before April 1st, you are to get all moneys over \$13,000 before April 1st.

B. F. Baum.

(Testimony of Kent Blanche)

“Remarks by Murray:

“This was written and given to me at the restaurant adjoining telephone building on Olive Street, Los Angeles.

“KENT BLANCHE, Attorney at Law

“740 South Olive Street,

“Los Angeles, California,

“Tucker 0126

“Dec. 10th, 1932

“Mr. Frank Murray,

“524 Wilcox Bldg.,

“L. A.

“Mr. Murray:

“This is to advise you that I have received word from Mr. Kleinschmidt that you will not receive the \$75.00 this mo. as expected, as Mr. Baum had objected to the payment until the matter of the interests had been taken care of.

“Very truly yours,

“Kent Blanche.

“Remarks by Murray:

(Greatly obliterated photostat attached, with the following legible words and figures):

“1174— W 74 St

“3500.00—500

“4421 S Van Ness 3200.00

“I couldn’t reach him his Phone disconnected.”

(Testimony of Kent Blanche)

The first time that I knew the date of discharge in bankruptcy of Mr. Baum was when we reopened the bankruptcy petition. I have no recollection of ever having known any specific date before. I did not know the date at the time Mr. Baum put through the sale for \$50,000 to Llewellyn that he had been discharged four days before. I knew of the assignment of Mr. Kleinschmidt to Mr. Baum of a 50 per cent interest in the Camp Rock proceeds when the assignment was made. I never knew that Mr. Kleinschmidt gave any considerable interest back to Mr. Baum. I knew that plaintiff's Exhibit 12 had been executed within two or three days after it was executed or at least dated. I presume I knew it within a few days after its date, November 15, 1932. I knew that the property had been forfeited by Mr. Baum and a half interest in the proceeds of the sale had been given to Mr. Baum. That did not raise any suspicion in my mind that there might be something peculiar in the relationships of Mr. Baum and Mr. Kleinschmidt getting a 50 per cent interest in the property that he had no interest in before. I prepared the agreement of the sale of this property in the first instance to Mr. Llewellyn. That agreement never said that Mr. Baum was supposed to get half of the money or \$25,000. I knew of the existence of plaintiff's Exhibit 12, dated November 15, 1932, at or within a few days after it was made. I know what that agreement provides. It provides that Mr. Baum is to receive 50 per cent of the profits derived from the sale of the mine, not 50 per cent of the proceeds. I knew about the instrument, although I did not prepare it. I think that the so-called default by Mr. Baum under the purchase contract with Sullivan and Kleinschmidt oc-

(Testimony of Kent Blanche)

curred in September. I am certain that I didn't receive any money from Mr. Baum either in August or September. I know that it occurred prior to that, but I undertook the payments. I knew at that time that Mr. Baum or Mr. Kleinschmidt were dealing with respect to the sale of that property with a man named Louis D'Elia. I recall an instrument dated August 8, 1931. I know Louis D'Elia. I do not know the signature of Louis D'Elia, Jr. I did not know that negotiations had gone so far that in August a written agreement had been signed by Baum and Mr. Kleinschmidt and Mr. D'Elia for fixing a price for the sale of that property.

(Whereupon plaintiff's Exhibit 23 was marked for identification.)

PLAINTIFF'S EXHIBIT NO. 23.

"MEMORANDUM OF AGREEMENT.

THIS AGREEMENT made and entered into this 18th day of August, 1931, at Los Angeles, California, by and between Benjamin F. Baum, Walter G. Kleinschmidt, and J. W. Sullivan, hereinafter designated as First Parties, and Louis F. D'Elia, Jr., hereinafter designated as Second Party:

WITNESSETH:

That in consideration of the payment to First Parties of the sum of one dollar (\$1.00) by Second Party, and other valuable considerations, and of the covenants and

(Testimony of Kent Blanche)

agreements hereinafter set forth, the Parties have agreed together as follows:

I

The First Parties are the owners, by mining location, of the lands hereinafter described.

II

That they do hereby lease and give and grant to Second Party the exclusive right and title to go upon said property, explore for and mine and use the ore and minerals thereon, and for such purposes use the premises in such manner as shall be reasonably necessary; erect and maintain manufacturies, machinery or other appliances thereon; construct and maintain roads and tracks thereon, and use said property in every way for the purposes of this contract; that he may, with the written consent of the first parties only first had and obtained, sublease or sell or assign all or any part of the rights granted under this contract, or contract with others to carry on the work contemplated hereby, but no sale, transfer, sub-lease or assignment shall relieve the said Second Party or the said land from the obligation of full performance of the covenants hereof, but the same shall carry with it only the rights and privileges herein granted to said party of the Second Part.

The Second Party may terminate this contract, so far as it requires him to mine or manufacture the product found on said property, or to pay royalty therefor, or taxes thereon, by giving thirty days (30) written notice of such termination to the Parties of the First Part, or their personal representatives, such notice to be given either in person or deposited in the United States Post

(Testimony of Kent Blanche)

Office, postage fully prepaid thereon, addressed to the First Parties at the address then designated in writing as the place for payment of royalties hereunder, and that the expiration of said thirty (30) days this agreement shall be terminated upon the adjustment, settlement and satisfaction of all accounts between the Parties to said date.

III

That at the date hereof the Second Party will go and/or remain upon the premises for the purpose of mining and manufacturing the product thereon; it being agreed that the object of this contract is the mining, manufacturing and handling of the placer gold and other minerals believed to be upon said premises. That he will pay to the First Party an amount equal to fifteen per cent (15%) of the total gross amount of mineral product mined, recovered or realized from said property during the full term of the lease.

That upon First Parties receiving the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) from the Second Party or his assigns or successors in interest, in payments of fifteen per cent (15%) royalty as hereinabove set forth, said First Parties or their successors in interest shall convey by deed or otherwise, all of their right, title and interest in and to all of said property to Second Party, his assigns or successors in interest and that all subsequent payment of said royalty shall terminate and that all rights in said property shall be vested exclusively, free and clear of all claims of any kind or character, in said Second Party or his assigns or successors in interest.

(Testimony of Kent Blanche)

That the failure on the part of the said Second Party to mine, manufacture or extract the mineral product from the mine or ore hereinabove set out, and/or to make said payments shall constitute a breach of this contract, and this contract shall be forfeited at the option of the First Parties hereto, and all rights of the Second Party shall cease and determine.

The total amount of mineral product received from the property monthly shall be ascertained by reference to the mill, mint or smelter returns therefor, as the case may be, dependent upon the character of the mineral product involved; and the Parties hereto may resort to such other data as they shall determine.

IV

The Second Party further agrees that he will pay, or cause to be paid, deliver or cause to be delivered, to First Parties, fifteen per cent (15%) of the gross output of said property, as ascertained, and that such payments shall be made as in Paragraph III set out on the tenth day of each month, as royalty for the next preceding month, and that the Second Party, at the time of each payment, shall transmit to First Parties an exact and truthful statement of the amount of product produced, taken or derived from such property, and an exact and truthful statement of the mill, mint or smelter returns or reports thereof, the rights however, being conceded and retained in the First Parties to inspect and review and test the correctness of said statement at any reasonable time and in such reasonable manner as they may wish to adopt; it being agreed that any errors in any respect, when ascertained, shall be recognized, corrected, settled and paid between the Parties.

(Testimony of Kent Blanche)

V

The Second Party shall during the life of this contract, pay all taxes or assessments, general or specific, levied upon said land or the machinery or improvements thereon, not including United States income tax, which may be assessed against the interest of the First Parties hereto, and pay the same before the date fixed therefor by law, during the continuance of this contract; provided that the Second Party may contest the legality of any of said taxes or assessments, and the non-payment thereof for the purpose of such contest shall not be considered a breach of this contract, or work a forfeiture thereof. The Second Party shall at all times keep said property free and clear from all liens, encumbrances or claims arising by, through or from any act or omission of the Second Party or any one acting by, through or under him.

VI

Anything herein contained to the contrary notwithstanding, the uninterrupted right of the Second Party to take, use and market the product mined or produced hereunder, as herein stipulated, shall continue unsuspended notwithstanding any disagreement between the Parties hereto, respecting the same, or this contract, so long as the Second Party shall pay to the First Parties, at the time or times and in the manner stipulated for, the amount of royalties and/or rents accruing hereunder, and otherwise comply with the provisions hereof and the payment of taxes and assessments.

VII

The Second Party covenants and agrees to and with the First Parties that he will not, by himself or through

(Testimony of Kent Blanche)

his agents, sub-lessees, assignees, or any one holding through, by, or under him herein, do or neglect to do any act or thing which will charge the premises hereby leased, or jeopardize the interests or rights of the First Parties herein; that he will at all times carry ample insurance against accident or injury to employes for the protection of the First Parties and of said premises; that he will carry on the working of said premises, in a good and workmanlike and minerlike manner, and in strict compliance with the laws of the State of California applicable thereto; and the First Parties expressly reserve to themselves, and the Second Party agrees that the First Parties shall have, the right by themselves, their agents or servants, at all reasonable times, to enter upon or into any part or parts of the premises hereby leased, or any of the structures made thereon or workings therein, owned or operated by the Second Party, his successors, sub-lessees or assigns, in the mining and producing of the products herein contemplated, and inspect and survey the same, measure and weigh the quantity of mineral or material taken from said property, or manufactured thereon, not, however, unnecessarily interfering with or hindering or obstructing the operations of the Second Party; that they shall at any reasonable time have access to all books and returns from mints or smelters or others connected with the said property or operating on any of the products thereof; and that the Second Party will aid the First Parties in any reasonable investigation which said First Parties may wish to make in the foregoing connection or connected with this contract.

(Testimony of Kent Blanche)

VIII

The covenants, terms, agreements and conditions herein contained shall run with the land, inure to the benefit of, and be in all respects binding and operative upon the heirs, executors, sub-lessees, sub-contractors, grantees, successors and/or assigns of the respective Parties hereto.

IX

The lands, mining locations and premises hereby leased to the Second Party are all of those certain placer claims situate in the Bellville Mining District, San Bernardino County, State of California, a more particular description being set out in Exhibit A hereto attached, hereby referred to and made a part hereof for greater particularity. All personal property such as tools now on the premises may be used by the Second Party during the life of this contract, and it is part of the consideration hereof that if this lease shall be forfeited, that Second Party shall furnish to the First Parties full information as to all work and explorations made by him on said property; and that all improvements, machinery, pumps and other appliances, excepting automobiles, tractors and trucks used by him thereon, all water explorations and/or wells and easements for or titles thereto, made or sunk by him, whether located on said property or other property, shall become the property of the First Parties hereto at the time of such forfeiture.

IT IS AGREED, that the title to said property is now held as herein set out, and that the First Parties shall permit the work done upon said properties by the Second Party for and on behalf of the First Parties, to be done for and on behalf of the First Parties, and permit the

(Testimony of Kent Blanche)

same to be used under the law in so far as it is legal thereto as future assessments upon said property for the purpose of maintaining the title thereto under the mining laws as mining locations; and the Second Party agrees to furnish to First Parties, as required by them, such affidavits and proofs of work as shall be required by law for the purpose of proving such assessment work from time to time, and of complying with the mining laws in relation thereto; and it is further agreed that if the First Parties neglect to take any necessary steps in filing notice of assessment work done, or in any other matter affecting or tending to affect the title to such lands, that then the Second Party may, at his own cost and expense, but in the name of and for the use and benefit of the said First Parties, and as a protection of the Second Party's rights hereunder, cause such steps to be taken to remedy any such defect, and in so acting the said Second Party shall be deemed to be and shall be the agent of the First Parties herein, but no such act or acts shall cumber or cloud the title of the First Parties to said land.

X

IT IS FURTHER AGREED that if the rents royalties, payments or product derived from said property shall be unpaid or undelivered in violation hereof, or remain unpaid after the days and times when by the preceding covenants the same shall be paid, and if the same or any payments provided hereunder remain in default for more than thirty (30) days, this contract shall at the option of the First Parties cease and determine and all rights of the Second Party or those holding under him, shall end without notice; or if the Second Party shall fail to keep

(Testimony of Kent Blanche)

and perform any of the other covenants and conditions herein expressed to be kept or performed on his part, for the period of thirty (30) days after demand in writing by First Parties, or the personal representative of either of them, requiring the performance of such covenants and conditions, and stating the violation complained of, then and from thenceforth, and in either of these events, it shall be lawful for the First Parties, or either of them, or the personal representative of either of them, to take and repossess themselves of all rights herein granted or contemplated, and the Second Party, and all persons claiming by, through or under him, to wholly exclude therefrom, and that in case of such forfeiture it is agreed that the Second Party shall promptly remove from said premises all automobile tractors and trucks hereinbefore described in paragraph IX hereof, which are not placed thereon as fixtures, within fifteen (15) days after the forfeiture and termination of said contract and his rights thereunder; and that if he shall fail to so remove same, that any thereof left, being or remaining upon said property after the termination of said fifteen (15) days, shall be and become the property of the First Parties, and that all moneys paid hereunder shall also be forfeited to the First Parties, and be and become their sole and exclusive property, not as a penalty, but as a part consideration for the use of said property and for this contract.

XI

The royalties and other moneys herein stipulated to be paid shall be paid to the said First Parties as their respective interests shall appear, at such bank or banks as may be by said First Parties, or their heirs or assigns, re-

(Testimony of Kent Blanche)

spectively, from time to time designated, by notice in writing to the Second Party, and in proportion to the respective interests of the Parties, which are hereby declared and agreed to be as follows, to-wit: Benjamin F. Baum, Walter G. Kleinschmidt and J. W. Sullivan as co-partners.

XII

All notices provided for in this agreement may be served on the respective Parties, by depositing the same in the United States Post Office in a sealed envelope, postage fully prepaid thereon, and addressed to the party for whom the same is intended, at such address as shall be furnished by them from time to time, in writing, and if no address is so furnished the same may be addressed to the First Parties at 814 Central Bldg. and to the Second Party at 405 Washington Building, Los Angeles, California, and such shall be deemed to be served at the date of the posting thereof, and the time shall then begin to run.

XIII

That said Second Party, as evidence of good faith that said operations are to be started and continued for the purpose of establishing an up-to-date, modern plant, fully equipped for the purpose of treating and handling of the ores and precious metals recovered from the property, that said Second Party will agree to expend a minimum of Ten Thousand Dollars (\$10,000.00) representing reasonable value therefor, within thirty (30) days from date of said lease and an additional Ten Thousand Dollars (\$10,000.00) within sixty days (60) from date thereof, and thereafter operate, mine and refine a minimum of three

(Testimony of Kent Blanche)

thousand (3000) tons per month, and that should Second Party fail or neglect to expend said amount of money towards the improvement and development of said property or to show vouchers or receipts for said expenditures as hereinbefore set forth, and/or operate said mine at at least the minimum capacity of three thousand (3000) tons per month, that First Parties, at their option, may terminate and cancel all rights and obligations in and to said lease and that the interest of the Second Party shall thereupon terminate and be of no further force or effect.

XIV

That it is further understood and agreed by and between the Parties hereto that said First Parties are still indebted to the former owners of said property in the sum of Fifteen Thousand Dollars, this amount being payable at the rate of One Thousand Dollars per month until the full amount of said balance is paid. That should said First Parties default in the payment of any of the said installments or any part of said balance of said principal due to said former owners, that said Second Party shall be given the right to make said payments when due and upon making such payments shall give said First Parties thirty (30) days within which to compensate or repay said Second Party for said sum advanced or paid for the completing of the purchase of said property, and should said First Parties fail to reimburse Second Party for the amount paid for on their account for said purpose within said Thirty (30) days from the date of said notice, that the interest of said First Parties in and to said land and contract of purchase from the said former owners shall by these presents revert to Second Party and

(Testimony of Kent Blanche)

Second Party shall then be authorized to complete the payment of whatever balance there may be due from the First Parties to said original owners and all their right, title and interest of First Parties to the future payment of royalties from Second Party shall thereupon terminate and be forfeited for the benefit of said Second Party or his assigns or successors in interest, and that all the interest of said First Parties in and to said land and premises shall likewise terminate and cease and become the sole and absolute property of said Second Party.

XV

It is further understood and mutually agreed that this lease covers only the placer claims listed in exhibit A. The following quartz claims are exempt from this agreement and are and remain the property of the First Parties:

Gold Junction Gold Bar No. 1 Gold Bar No. 2

It is understood that the said First Parties will be given right and egress to enter upon the property covered by Exhibit A and to mine said claims without unnecessary interference with operations of the Second Party.

Said First Parties will further be allowed and permitted the use of water in the existing well for the operation of the quartz claims above mentioned, but Second Party may furnish water from other sources at his option in lieu of providing the use of the well now existing in the premises, it being understood however, that the amount of water to be provided will be at least equal to the capacity of the well.

(Testimony of Kent Blanche)

IN WITNESS WHEREOF, the said Parties hereto have hereunto set their hands and seals the day and year first above written.

Benjamin F. Baum

Walter J. Kleinschmidt

J. W. Sullivan

(COPY)

FIRST PARTIES

Louis F. D'Elia, Jr.

SECOND PARTY"

EXHIBIT "A"

ROYAL PLACER CLAIM NO. 1:

Commencing at the Southwest corner Section post and going 1320 feet north to a post marked North West Corner; thence 1320 feet East to a post marked North East Corner; thence 1320 feet South to a post marked South East Corner; thence 1320 feet to the point of beginning. This claim is situated in S. W. 1/4 of Section 28, T. 7, N. R. 3 E in Belville Mining District of San Bernardino County State of California. This claim contains 40 acres, or in other words a sixteenth part of a section, and shall be known as the Royal Placer Claim No. 1, and is about 12 miles North Easterly from Camp Rock to Newberry Springs; as recorded March 4, 1924, in Book 171 of Mining Records, Page 64, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 2:

Commencing at the South West Corner and going 1320 feet North to a post marked North West Corner; thence

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1320 feet East to a post marked North East Corner. Thence 1320 feet south to a post marked South East Corner. Thence 1320 feet to the point of beginning. This claim is situated in Section 28, N. W. 1/4 of S. W. 1/4 in T. 7, N. R. 3 E in Belville Mining District of San Bernardino County, State of California. The contents of this claim is 40 acres, or in other words, one sixteenth part of a section. This claim shall be known as The Royal Placer Claim No. 2; as recorded March 4, 1924, in Book 171 of Mining Records, Page 65, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 3:

Commencing at the South West Center Section Post and going 1320 feet North to a post marked North West Corner. Thence 1320 feet East to a post marked North East Corner. Thence 1320 feet South to a post marked South East Corner. Thence 1320 feet to the point of beginning. This claim is situated in S. W. 1/4 of N. W. 1/4 in Section 28, T 7, N. R. 3 E, in Belville Mining District of San Bernardino County, State of California, and shall be known as the Royal Placer Claim No. 3, and about 2-1/2 miles from the Antony Coper Mine, or known as the Midnight Mine, and contains 40 acres in all; as recorded March 4, 1924, in Book 171 of Mining Records, Page 65, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 4:

Commencing at South West Corner on the Center Section line and going 1320 feet North to a post marked North West Corner; thence 1320 feet East to a post marked North East Corner. Thence 1320 feet South to

(Testimony of Kent Blanche)

a post marked South East Corner. Thence 1320 feet to the point of beginning. This claim is situated in the S. E. 1/4 of N. W. 1/4 in Section 28, T. 7, N. R. 3 E. in Belville Mining District of San Bernardino County, in the State of California, and shall be known as the Royal Placer Claim No. 4, and contains forty (40) acres in all; as recorded March 4, 1924, in Book 171 of Mining Records, Page 66, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 5:

Commencing at the South West Center of the South West 1/4 of Section 28 and going 1320 feet North to a post marked North West Corner. Thence 1320 feet Easterly to a post marked The Center of Section 28. Thence 1320 feet South to a post marked South East Corner. Thence 1320 feet to the point of beginning. This claim is situated in the N. E. 1/4 of S. W. 1/4 of Section 28, in T. 7 N. R. 3 E and contains 40 acres, and shall be known as The Royal Placer Claim No. 5, and its location is in the Belville Mining District of San Bernardino County, State of California, and is marked by the Camp Rock Cook House and also the mill; as recorded March 4, 1924, in Book 171 of Mining Records, Page 67 of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 6:

Commencing at South End Center Meridian line and going 1320 feet West to a post marked South West Corner. Thence 1320 feet North to a post marked North West Corner. Thence 1320 feet Easterly to a post

(Testimony of Kent Blanche)

marked North East Corner. Thence 1320 feet to the point of beginning. This claim is situated in S. E. 1/4 of S. W. 1/4 of Section 28, T. 7 N. R 3 E. and contains 40 acres and shall be known as The Royal Placer Claim No. 6, its location is in the Belville Mining District of San Bernardino County, State of California, as recorded March 4, 1924, in Book 171 of Mining Records, page 67, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 7:

Commencing at the South East Corner Section post and going 1320 feet West to a post marked South West Corner. Thence 1320 feet North to a post marked North West Corner. Thence 1320 feet East to a post marked North East Corner. Thence 1320 feet South to the point of beginning. This claim is situated in S. E. 1/4 of S. E. 1/4 of Section 28, in T. 7 N. R. 3 E. and contains 40 acres, and is located in the Belville Mining District of San Bernardino County, State of California, and shall be known as The Royal Placer Claim No. 7; as recorded March 4, 1924, in Book 171 of Mining Records, page 68, Records of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 8:

Commencing at South Center Section Post and going 1320 feet North to a post marked North West Corner. Thence 1320 feet East to a post marked North East Corner. Thence 1320 feet South to a post marked South East Corner. Thence 1320 feet to the point of beginning. This claim is situated in the S. W. 1/4 of S. E. 1/4 of Section 28, in T. 7 N. R. 3 E. and contains 40

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acres, and is located in Belville Mining District of San Bernardino County, California, and shall be known as The Royal Placer Claim No. 8; as recorded March 4, 1924, in Book 171 of Mining Records, Page 68 of San Bernardino County, California.

ROYAL PLACER CLAIM NO. 9:

Commencing at the Center of Section 28 and going 1320 feet East to a post marked North East Corner. Thence 1320 feet South to a post marked South East Corner. Thence 1320 feet West to a post marked South West Corner. Thence 1320 feet to the point of beginning. This claim is situated in the N. W. 1/4 of S. E. 1/4 of Section 28, in T. 7 N. R. 3 E. and contains 40 acres, and is located in Belville Mining District of San Bernardino County, State of California, and shall be known as The Royal Placer Claim No. 9; as recorded March 4, 1924, in Book 171 of Mining Records, Page 69, Records of San Bernardino County, California, comprising all told 360 acres of placer claims."

REDIRECT EXAMINATION

Question by Mr. Wright. "Mr. Blanche, on cross examination Mr. Turnbull asked you whether or not there was any suspicion in your mind at the time Mr. Kleinschmidt gave Mr. Baum a 50 per cent interest in the proceeds of the Camp Rock Mine. Will you please tell his Honor what the consideration was for that agreement? * * * That is the agreement that you say is the fraud of November, 1932."

(Testimony of Kent Blanche)

(Whereupon, an objection to the question was made on the ground that it was calling for a conclusion of the witness; invading the province of the court, to determine that; not calling for facts, but calling for pure legal conclusion.)

(Whereupon, the objection was overruled and an exception taken.)

"THE WITNESS: Well, the consideration for that—I knew that immediately prior to and surrounding the original agreement, which I prepared with Llewellyn and Evans, that Mr. Baum had been instrumental in consummating that sale, and I knew that Mr. Kleinschmidt wouldn't let that go unrewarded, particularly in view of the fact that I knew also the state of Mr. Kleinschmidt's finances—that it was just touch-and-go as to whether or not he could keep it, and a sale would have to be made or the contract would have been defaulted. I knew all of those things, so there was no suspicion raised in my mind in November.

MR. TURNBULL: Now, I move to strike the answer upon the ground it calls for a conclusion of law, and not a statement of facts; invading the province of the court.

THE COURT: That may be stricken. Remember, the question is as to the consideration and your knowledge of what you actually know of the consideration.

MR. TURNBULL: If your Honor please, I move to strike the answer commencing with the words 'I knew that Mr. Kleinschmidt wouldn't let it go unrewarded, and I knew all this'—as being a conclusion of the witness, invading the province of the court and as calling for a

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conclusion of the witness. It was not a recital of facts, but a recital of a state of mind of another person.

THE COURT: I will deny the motion."

Mr. Baum definitely worked out there on the mine. He went out and ascertained that development work was done. Subsequent to that assignment he assisted very materially in the trial of the case of Kleinschmidt v. Grubl. In that case he procured a surveyor and assisted very materially in a very difficult survey, and assisted me materially throughout the case with trips to the property when required and discussions with witnesses and procuring witnesses and various things which were more or less a part of his assistance rendered. He was instrumental in arranging for the sale of the mine between Mr. Llewellyn and Mr. Kleinschmidt. Those parties came to me at Mr. Baum's direction for the final consummation of the contract. He acted as Mr. Kleinschmidt's agent through the Llewellyn and Evans transaction and prior to that. He had other tentative sales he was endeavoring to make on behalf of Mr. Kleinschmidt. I knew of Mr. Kleinschmidt's financial condition in the spring of 1932. His financial condition was such at that time he had to borrow money on two occasions to make the thousand-dollar payments. The thousand-dollar payments were the payments due under the agreement between Messrs. Stock and Pohl and Sullivan. That agreement is defendants' Exhibit A. Mr. Kleinschmidt sent me checks from October until the full purchase price had been paid. That was from October of 1931 for a period of approximately 15 additional months. He turned over to me fifteen or sixteen thousand—a sum in excess of that. There were

(Testimony of Kent Blanche)

some liens that he subsequently paid and some other expenses. He paid me about \$15,800. The total purchase price of the mine was \$21,800. When I include the \$15,800, there was an \$800 lien on the property in favor of the Hayward Lumber Company which was also paid and settled for that amount. I am quite sure that I received that amount of money from him. During October and November, 1931, I received some \$333 from Sullivan but the balance I received from Mr. Kleinschmidt. Mr. Sullivan made his last payment in November of 1931, I believe. I am not absolutely positive about that. I didn't presume that Mr. Sullivan's interest would be important here, and I didn't check up on that, but I believe that it was at that time. The sheet I had in my hand this morning was wholly written in my handwriting and was prepared by me. I think the document is incorrect in stating that Sullivan's last payment was in October. I believe he made his last payment in November. I have a distinct recollection that he paid for two months in November of 1931.

"Q [BY MR. WRIGHT] Yes. And your testimony was this morning, as I recall it, that Mr. Baum's last payment was in August of 1931. Is that right?

MR. TURNBULL: September, counsel.

THE COURT: September.

Q BY MR. WRIGHT: I beg your pardon. September. You testified to that this morning, did you not?

A No, I didn't. I testified that—

THE COURT: Well, there is no use going over that again. This witness has testified it was in September, according to his recollection. Now, do not take up time in going over those matters again."

(Testimony of Kent Blanche)

RECROSS-EXAMINATION

With reference to my having testified that Mr. Baum made a payment, in my testimony this morning, I believe it was that I didn't know that he had made a payment. If he defaulted in September, he didn't make a payment in September. I didn't want to testify that he had. I don't believe that he had. I made a quitclaim deed from Baum to Kleinschmidt on February 29, 1932, because Mr. Kleinschmidt had procured to be assigned in September, 1931,—procured to be assigned a re-assignment of 26-2/3 interest in the property, and the original assignments had provided for a third. I felt that Mr. Kleinschmidt's preparation of this assignment was ambiguous and I advised him that it would not clear the title properly and I suggested that Mr. Kleinschmidt make a quitclaim. I wasn't familiar with the adjudication in bankruptcy in 1931 at that time. I do not recall having any particular knowledge of any adjudication in bankruptcy, but only that I felt that it was merely for the purpose of clarifying a situation which had already crystallized it. I thought Mr. Baum had no further right in the property at that time, having defaulted. Under the terms in that contract his right to the property ceased, and his putting a quitclaim deed on file did not affect anything but the record title, and it was a clarification of something which actually had already taken place. Mr. Baum was a married man. I did not have his wife join in the deed because she wasn't on the original deed. This was merely for the purpose of clarification of the record. Frankly, I don't know why I didn't have her sign it. Perhaps it was an oversight. I think it definitely was. I don't believe I would have had this deed executed if I had known or had in mind that

(Testimony of Kent Blanche)

there had been an adjudication in bankruptcy. Of course it is my state of mind back six years. Having had a lot of these things thrown at me since, it has sort of confused me as to what my then knowledge was. The case involving the validity of the location, and so forth, was tried three days in April and seven days in August, 1935. At the time the original agreement was made in April of 1931, I did not represent any of these people, Mr. Baum, Mr. Kleinschmidt or Mr. Sullivan. I first was connected with the enterprise when I prepared a sort of working agreement concerning the purchase—that is, concerning their contributions to the mine after they had purchased it. I believe it was around April 24, 1931. That was the first thing I had done. I came to prepare it at the request of Mr. Kleinschmidt. He presented me with a rough draft of a sort of a general agreement between these three parties, each to pay a third of the purchase price, but participate in 26-2/3 of the profits. The additional 20 per cent went to a man by the name of Murray and seven assigns. That was equally split among eight people—2-1/2 per cent each. That was in the nature of a commission for the purchase of the mine. My office is in Los Angeles. I saw Baum intermittently, maybe a space of a week or a month, depending on whether or not I had anything to do with him. I knew where this property was located. It was located about 30 miles from Daggett, in San Bernardino County. I considered Mr. Kleinschmidt was my client of the three and I billed him. I represented all of them in making the payments. I knew what Mr. Baum was doing up to the time of his adjudication in bankruptcy in November of 1931. He was a builder in Los Angeles. He was not out on the property. None of

(Testimony of Kent Blanche)

these three persons resided on the property. None of these three persons worked there more than a day or two. The sale was made to the Llewellyn people in April of 1932. There were two watchmen working the property from the summer of 1931 until April, 1932. These watchmen were dry-washing. They were operating the property in a very small way. I saw Mr. Baum from September of 1931 until November, 1932, half a dozen times. I don't believe more than that. I don't recall. I don't recall of any particular instance at the present time which necessitated my seeing him except possibly for the purpose of procuring the execution of the documents, which he did execute. I had no particular occasion that I recall ever to get in touch with him, except that I did discuss with him, I think, more often on the phone concerning that deal with Evans and Llewellyn. I prepared plaintiff's Exhibit 20, which is the Llewellyn sale contract. Mr. Baum acted as agent in this sale and in procuring the purchasers. He got something in the way of a commission in November. He didn't at that time. I knew he assisted in arranging the sale because Llewellyn and Evans told me that they had been to his office and discussed it with him. He told me they were coming over. He had the terms of the sale pretty well crystallized. At that time Mr. Kleinschmidt was in San Francisco. I told him on the telephone and these men discussed further and more complete terms in my office concerning that deal. I verified those terms with Mr. Kleinschmidt and they theoretically shook hands on the deal over the telephone, leaving it for me to prepare the final papers. Mr. Kleinschmidt at that time was Treasurer of The Pacific Telephone and Telegraph Company in San Francisco. He

(Testimony of Kent Blanche)

was located in San Francisco. He was a resident of this district until he moved in the summer of 1931. He was transferred from General Auditor of the Southern California Telephone Company to Treasurer of The Pacific Telephone and Telegraph Company. That necessitated the transfer. He lived in Palo Alto and his office was in San Francisco. I don't recall if I saw him over once or twice between that time and May, 1932. Maybe I didn't see him at all. I had various discussions with him over the telephone. Mr. Sullivan, during the time when Mr. Kleinschmidt moved to San Francisco until May of 1932, was hard to keep track of. He was operating the Sullivan Beauty College in the Arcade Building or across the street from the Arcade Building in Los Angeles. He was also connected during some portion of that time with a Mr. Sixbey in a mine up north, and subsequently went over to San Francisco. The last I heard about him prior to his death was that he was a barber in San Francisco. He was a man of considerable talent. He was a prize fighter and a beauty specialist. I have no distinct recollection of ever having seen Mr. Baum during that particular time, but I think I must have seen him, because—I was more familiar with him in 1932 than I had been in April, 1931. I must have seen him at some time during that period of time, but I don't recall any specific instance. There is an assignment by Baum in September, but I didn't procure that. There is a quitclaim deed in February, which I did procure. I believe I saw him at that time. The assignment by Baum, which is Exhibit 11, is dated September 23, 1931, I believe. (The exhibit was subsequently identified as defendants' Exhibit B.) I don't recall having prepared it. I don't distinctly recall know-

(Testimony of Kent Blanche)

ing about it at the time it was executed. I know in subsequently looking it over, I felt it was insufficient, but I don't recall whether I saw it shortly after the time it was prepared or not. I felt it was insufficient. I felt a quit-claim deed would have cleared the title much more thoroughly. I suggested the preparation of a quitclaim deed. Mr. Kleinschmidt suggested that it would be a good idea and during the course of several months I procured it. I don't have any distinct recollection as to when I first saw defendants' Exhibit B. I don't recall that I knew the assignment was contemplated before it was executed. I was representing Mr. Kleinschmidt at that time. The reason that some of those things are rather hazy in my mind is that while I was retained by and acting more specifically for Mr. Kleinschmidt, I more or less considered these three men as an entity. They knew each other better than I knew any of them, and their personal dealings among themselves were just as putting them down more or less as a clerk, as I did in that agreement. It was something that I didn't pay very much attention to. Prior to February, 1932, in looking over that assignment, I felt that that was insufficient. I don't recall any instructions to me by Mr. Kleinschmidt or any previous knowledge of the contemplated execution of Exhibit B. It is my recollection that Mr. Kleinschmidt told me at or about that time that Mr. Baum was not going to make any payments or had told him that he couldn't come through any more, and that Mr. Baum had told me that he had to drop out, and it is my recollection that there was a conversation between Mr. Kleinschmidt and me concerning something in the nature of clarifying that; but whether or not that was before or about the time of that assignment—if I am

(Testimony of Kent Blanche)

not mistaken it was about the time that was procured by Mr. Kleinschmidt himself but not by me.

RECROSS-EXAMINATION

One of the deals that Mr. Baum was instrumental in bringing to my office is one by which Mr. Kleinschmidt purported to sell this Camp Rock property to Frank Llewellyn and Jerome Evans in April, 1932. That purports to be a sale of the same property instead of to Llewellyn, to Llewellyn and Evans. I drew that contract. I drew both of them. I drew one by which the sale was made to Llewellyn instead of to Llewellyn and Evans. On the occasion of drawing the one from Evans to Llewellyn, I did not talk to Baum. I did not talk with reference to this one on the 8th of April. I don't think Baum knew about the other one. Baum was the man who got these purchasers. The subsequent agreement drawn a month later was after Evans had dropped out. I think Baum called me on the telephone concerning the sale at or about the time I drew this agreement on the 8th day of April, 1932. Baum did not come back and tell me that Evans dropped out and that he had to have a new agreement with Kleinschmidt and Llewellyn alone. Llewellyn told me that. I don't recall if Baum made the new deal by which Llewellyn and Kleinschmidt made the new deal. The situation was that Evans and Llewellyn got into a fight and Llewellyn came in and said he couldn't proceed with Evans in the deal and that if Evans was going to have a 50 per cent, he just couldn't do it. He said "I am going to default and I want you to treat us as gentlemen." I said "If you make the default and you then want to enter into a new agreement, I don't see how

(Testimony of Kent Blanche)

we can prevent it." I discussed that with Mr. Kleinschmidt. So a new deal was entered into with Mr. Llewellyn alone and crediting him on the \$50,000 purchase with \$1,000, which he had previously paid when it was in partnership with Mr. Evans. That is why this second agreement. Mr. Baum didn't have anything to do with it. That is why the first agreement was for \$50,000 and the second agreement \$49,000. Mr. Baum had nothing to do with the second agreement. The reward for the second agreement was that he was to get a 50 per cent interest because it was practically the same deal, leaving out Evans. I didn't know at the time that he was to get a 50 per cent interest. I didn't know that he was to get any interest.

(Whereupon, there was offered and received into evidence plaintiff's Exhibit 24, which is an agreement from Kleinschmidt to Llewellyn and Evans, dated April 18, 1932.)

“AGREEMENT FOR SALE OF MINING PROPERTY

THIS AGREEMENT, made and entered into by and between WALTER G. KLEINSCHMIDT of the City of San Francisco, State of California, hereinafter called Vendor, and JEROME H. EVANS and FRANK LLEWELLYN, of the City of Los Angeles, hereinafter called Vendees,

WITNESSETH: That in consideration of the covenants of the parties hereto hereinafter contained, the said Vendor agrees to sell and convey to the Vendees, and

(Testimony of Kent Blanche)

Vendees agree to purchase those certain mining properties located in the County of San Bernardino, State of California, and more particularly described as follows, to-wit:

Royal Placer Claim Number 1, as per description recorded in Book 171, page 63, Mining Records.

Royal Placer Claim Number 2, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 3, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 4, as per description recorded in Book 171, Page 65, Mining Records.

Royal Placer Claim Number 5, as per description recorded in Book 171, Page 66, Mining Records.

Royal Placer Claim Number 6, as per description recorded in Book 171, page 67 Mining Records.

Royal Placer Claim Number 7, as per description recorded in Book 171, page 68, Mining Records.

Royal Placer Claim Number 8, as per description recorded in Book 171, Page 68, Mining Records.

Royal Placer Claim Number 9, as per description recorded in Book 171, Page 69, Mining Records.

Gold Junction Quartz, as per description recorded in Book 168, Page 189 Mining Records.

Gold Bar No. 1, as per description recorded in Book 168, Page 183, Mining Records.

Gold Bar No. 2, as per description recorded in Book 168, Page 183, Mining Records.

The purchase price to be paid for said property shall be in the amount of Fifty Thousand Dollars (\$50,000.00) in lawful money of the United States, to be paid by the

(Testimony of Kent Blanche)

Vendees to the said Vendor upon the terms as hereinafter stated, to-wit:

One Thousand Dollars (\$1000.00) upon the execution of this agreement.

One Thousand Dollars (\$1,000.00) on May 1st, 1932,

Two Thousand Dollars (\$2,000.00) on June 1st, 1932,

Four Thousand Dollars (\$4,000.00) on July 1st, 1932, and in installments thereafter at the rate of fifteen per cent (15%) of the gross mineral products produced from said property with a minimum guarantee of One Thousand Dollars (\$1000.00) per month until the full purchase price has been paid.

It is particularly understood and agreed that the terms hereof shall be without grace save and except as regards the payment of May 1st, 1932, with reference to which payment the said Vendees shall have a period of eight (8) days grace. All payments thereafter shall be made on the first day of each and every calendar month.

It is particularly understood and agreed that in the event said Vendees desire to complete the payment of the purchase price of said mining property at any time before the payment thereof becomes due under the terms hereinbefore set forth, that the same may be done, in which event said vendees will be allowed a deduction of six per cent (6%) from the then remaining unpaid purchase price.

It is particularly understood and agreed that all title charges will be paid by the Vendees but may thereafter be deducted from the payment falling due under the terms of this agreement out of June 1st, 1932.

(Testimony of Kent Blanche)

It is further understood and agreed that any failure to pay any installment of the purchase price shall constitute an immediate forfeiture on the part of said Vendees, and the said Vendor shall be released from all obligations both at law and in equity, to convey said property, and in such event the Vendees shall forfeit all right to said property and all payments theretofore made by said Vendees shall be forfeited to the said Vendor, and in the event of such forfeiture, said Vendees shall be relieved from all further payments on account of said purchase price.

It is understood and agreed that an accounting of all mineral products shall be continuously and permanently maintained to show in intelligent detail all revenue derived from the operation of said property hereinbefore described, and all Treasury receipts and vouchers shall be permanently retained by the said Vendees. The Vendor will at any time upon request, be furnished with a complete and full accounting of all revenue derived from the said property, and said Vendor may furthermore verify said accounting with the accounts of said Vendees.

It is further understood and agreed that said Vendees may deposit any and all payments on account of the purchase price with depository in Los Angeles, California, said depository to be designated by the said Vendor.

The said Vendor agrees to convey by proper deeds a good and sufficient marketable title to said property free and clear of any incumbrances whatsoever.

(Testimony of Kent Blanche)

It is particularly understood and agreed that the said Vendor does not warrant or guarantee title as to any of the personal property now located on the property herein-before described, but does hereby sell and convey all of his right, title and interest in and to said property, and further agrees to hold the said Vendees free and harmless from any litigation or from the costs thereof, which may arise out of or concerning the title to said personal property, it being fully understood and agreed that should any valid or subsisting claims be advanced against any of said property, that said Vendees may purchase the same or deliver to the real owner thereof at their pleasure.

It is further understood and agreed that said Vendees will pay any and all taxes assessed against said property during the term of this agreement, and will do all necessary assessment work in the time provided by law therefor.

It is further understood and agreed that said Vendor will pay any and all incumbrances now existing against said property within a sufficient time as to not hazard the interests of said Vendees.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 8th day of April, 1932.

Walter G. Kleinschmidt

Vendor

Jerome H. Evans

Frank Llewellyn

Vendees

(Testimony of Kent Blanche)

STATE OF CALIFORNIA)
) ss
CITY AND COUNTY OF SAN FRANCISCO)

On this 19th day of April in the year One Thousand Nine Hundred and thirty-two before me, W. W. HEALEY, a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared WALTER G. KLEINSCHMIDT, known to me to be the person described in and whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said City and County of San Francisco, the day and year in this Certificate first above written.

(NOTARIAL SEAL) W. W. Healey
Notary Public, in and for the said City and County of San Francisco, State of California. 208 Crocker Building

My Commission expires August 29, 1933.

No. 72 'Endorsed' recorded at Request of Frank Llewellyn Apr 23, 1932 at 11:05 A. M. in Book 796, Page 327 Official Records, San Bernardino County, Calif., Fulton G. Feraud, County Recorder, By A. R. Schultz, Deputy. Fee \$2.00.

Compared
HP M. Lawrence K. Keller

(Testimony of Kent Blanche)

STATE OF CALIFORNIA,)
) ss.

County of San Bernardino,)

I, TED R. CARPENTER, County Recorder in and for the County of San Bernardino, State of California, do hereby certify that the foregoing is a full, true and correct copy of the AGREEMENT FOR SALE OF MINING PROPERTY recorded in book 796 of Official Records page 327 of San Bernardino County Records.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, this 13th day of November, 1935,

TED R. CARPENTER, County Recorder.
By C C Boyd Deputy Recorder."

REDIRECT EXAMINATION

In addition to bringing these parties together, I previously testified that Mr. Baum did work out there on the mine.

"THE COURT: I somewhat touched the same subject, and my understanding was that the witness said Baum was a contractor here in town, and I understood that he had not been working on the mine.

THE WITNESS: That is right; wasn't working on the mine."

As a lawyer I deemed it necessary that the record title there had to be in better shape than it was in order for that property to be salable. I had an abstract of title. In that abstract of title the agreement of April, 1931, showed up.

(Testimony of Benjamin Franklin Baum)

BENJAMIN FRANKLIN BAUM,

called as a witness on his own behalf, being first duly sworn, testified as follows:

I am one of the defendants in this action and reside at 1565 North Columbus, Glendale, California. At the present time I am employed by the government as a resident engineer inspector. In April, 1931, I was in the contracting business in Los Angeles, with my brother as a copartnership under the name of H. W. Baum & Company. I and Mr. Sullivan and Mr. Kleinschmidt entered into a contract to purchase the Camp Rock Placer Mine from Mr. Stock and Mr. Pohl. That agreement provided for the payment of \$1,000 a month by us three gentlemen to Mr. Stock and Mr. Pohl. I was under the impression that I defaulted in July. I am not positive, but it might have been in August. When I say defaulted, I mean that the last payment I made was either in July or August, 1931. I didn't have any money to make further payments with. I could not continue on with my part of the agreement. I told Mr. Kleinschmidt that. I do not know whether I made my last payment in July or August. In August I sent a waiver up to Mr. Kleinschmidt in San Francisco and he sent it back. He said it wasn't in the form he wanted it, and that he would be down and he would make up the agreement as he wanted it made, which he did. Mr. Kleinschmidt asked me to give him an assignment of my interest and that was subsequent to the time that I defaulted under the agreement. Defendants' Exhibit B is the assignment I executed at Mr. Kleinschmidt's request. Mr. Kleinschmidt prepared it, or at least he brought it to me. I don't know who

(Testimony of Benjamin Franklin Baum)

wrote it. I didn't write it myself and my lawyer did not do it for me. I filed my voluntary petition in bankruptcy in this court on November 6, 1931. My attorney at the time was Mr. Parke of Bixler & Parke.

(Whereupon, it was stipulated that Mr. Parke had retired from practice because of a nervous and mental breakdown and cannot be consulted on any subject. It was further stipulated that he could not be produced at the trial.)

I had several conferences with Mr. Parke regarding the filing of my petition in bankruptcy. He went over all of our affairs with my brother and me. My brother also filed a petition in bankruptcy at that time. I mentioned to Mr. Parke this Camp Rock Placer Mine. I told Mr. Parke I had defaulted in my payments on this mine and that I had some kind of an interest which might at some time be worth something. I didn't know, but I considered it worth nothing. In fact the agreement that I wrote—that I sent up to Mr. Kleinschmidt—wasn't that kind. I waived all my rights because I didn't consider it was any good. I explained this to Mr. Parke and he said "I don't think it is any good," and it was never put on there. By that I mean it was never declared among our assets. The interest to which I am referring is the provision in the agreement of April 24, 1931, plaintiff's Exhibit 18 in evidence, which provides as follows:

"In the event that any of the said parties fail or refuse to supply his proportion of the required funds, when and as said funds are required as herein set forth, time being the essence of this requirement, then, and in that event, the other parties hereto shall have the right to pay such

(Testimony of Benjamin Franklin Baum)

sums as are required, and in that event, any and all interests owned by said defaulting party in and to said agreement for sale of mining property, or in or to said property, shall be deemed forfeited; provided, however, that any and all moneys paid under and by virtue of said agreement shall be repaid to said defaulting party at the rate of five per cent of any and all profits produced by said property, after said property has been fully paid for, and good and sufficient deed conveying said property shall have been executed and delivered to the other two parties; or in the event of sale of said Camp Rock Placer Mine, said defaulting party shall be paid at the rate of twenty-six and two-thirds per cent of the payment made under said sale until he has received an amount of money equal to the amount of money which he has supplied with this agreement."

I put up money for five months under the contract at the rate of \$333.33 each month. I made five payments. At the time I went into bankruptcy I had no agreement for the sale of this Camp Rock mining property and Mr. Kleinschmidt had no agreement for the sale of it, and I considered at this time that this right was of no value or of no consequence in November of 1931. I did not consider that it was of any value then for it seemed we would have been very lucky if we could have sold that and it didn't look like the payments could have been kept up; if they weren't kept up the property was lost. We couldn't find anybody who would make a payment down on the thing. There were a lot of people who wanted to take the thing on a royalty basis, but that didn't make the payments and there wasn't enough money in Mr. Klein-

(Testimony of Benjamin Franklin Baum)

schmidt's hands to keep it going, I wouldn't think. I knew that when Mr. Kleinschmidt started, he did not have enough money to keep up the making of payments. When I say when he started, I am referring to when the deal was talked over at first, in April, 1931. Referring to a month or two prior to January and February, 1932, I had some parties interested in buying and it looked like we might make a sale. They didn't want to put much money down, but it was really about the best thing that was offered at the time. That deal went along until December and of course Kleinschmidt was getting in worse shape financially all the time, having to put up this money and he said we would have to sell it.

"THE COURT: Who said 'we would have to sell it'?

THE WITNESS: Kleinschmidt said he would have to sell it.

THE COURT: Oh, yes."

I can't remember exactly, but I think about that time, after a meeting with the people, I was trying to sell it for Kleinschmidt in December, they couldn't put up any money, kept putting me off all the time. So I thought, "Kleinschmidt, I don't think I can sell it to those people." Then Evans dropped in on me and we talked over the deal. I said, "Well, I think that Kleinschmidt will take \$50,000.00 for this. He won't allow you to put in the quartz. He won't sell the quartz." So he came back again and in the meantime I talked to Kleinschmidt on the phone, and he said, "Well, I think I am willing to put in the quartz claim." I said, "Well, I think I can make a deal with this fellow, if you put the quartz claim in," which he did. I said, "Well, I think the deal is satisfactory to

(Testimony of Benjamin Franklin Baum)

Kleinschmidt." He got in touch with Kleinschmidt, and Kleinschmidt sent him over to Blanche to draw up the papers. Except for what I have just told you, I handled all the negotiations for the sale of this mine. I think they talked to Kleinschmidt on the phone once to get a verification of what I had told them. About this time I made one or two trips up to the mine and we had some trouble with the watchmen up there. He told me that he would like for me to keep in touch with the mine, but after he was transferred to San Francisco he wanted me to look after his interests, and I did do that. Whenever there was anything to be done that I could do, I did it. He never paid me anything. I never got paid for it. I said at that time I thought \$5,000 was right. That was between November and December, 1931. Kleinschmidt said, "If you get a cash price I can give you \$5,000 for it." Well, we couldn't even raise a thousand dollars, so we couldn't even make a deal with them. Then when we got hold of Evans and Llewellyn, I asked him the same price on that deal, and we thought we were going to get about \$25,000 down from those people, but it landed up only a thousand dollars a month. And he said, "I can't pay you a dime." He said, "I'll have to make some other arrangements," and that is the way it was left until he finally made the agreement, which was recorded in November. That agreement is the agreement of November 15, 1932. That is plaintiff's Exhibit 12 in evidence. I never had any oral or written agreement with Walter Kleinschmidt that Walter Kleinschmidt would reconvey anything to me after my discharge in bankruptcy. I never discussed with him at any time that I was going to give him the deed that is here in evidence for the purpose of defrauding my credi-

(Testimony of Benjamin Franklin Baum)

tors. I gave them all I had. I gave that deed in full faith and I didn't want anything more to do with it. Mr. Kleinschmidt did not tell me at any time that he would reconvey this property or anything in it to me. I did not discuss my bankruptcy question with Mr. Kleinschmidt, and he didn't know anything about it any more than I did. The bankruptcy happened to be a shot out of a cannon with us.

CROSS-EXAMINATION

Mr. Kleinschmidt came down here from San Francisco and said to me, "I wish you would act as my agent in the sale of the Camp Rock property." I was looking after his affairs from July on. This occurred before November. It was in September that he was down here. I don't remember him being down in November. I don't think that he was down here within a month after my bankruptcy. I was up there. Wherever it was, he told me to sell the Camp Rock property. I proceeded within a month of my bankruptcy to get purchasers. I had purchasers before. I continued to try to get a purchaser. The Evans and Llewellyn contract was not the first contract I got signed up. I got one signed up in July with Jackman and McClure. I just showed you another I got signed up here in August with D'Elia. I didn't say that I was out of the business by June. I testified I made five months' payments. I have seen a contract purporting to be between Benjamin F. Baum and Walter Kleinschmidt and Sullivan, as sellers, with Louis D'Elia. I couldn't tell you whether that was made on or about the date it bears, the 18th of August. I didn't pay in September so I still had an interest on August 18, 1931, the date of the exhibit for

(Testimony of Benjamin Franklin Baum)

identification. I know I defaulted in September. I douldn't tell you whether I got the Evans and Llewellyn deal on April 8th. That is the deal that went through in the modified form, when Evans went out and Llewellyn went through with the deal. The deal was made with Evans and Llewellyn but I wouldn't take the responsibility of keeping those people together. The fact that Evans dropped out and Llewellyn came back, why, the sale was all I was interested in. I wasn't trying to keep them together. At the time I made the deal and thereafter, at any time in 1932, I did not have a real estate broker's license. I couldn't and never collected a real estate commission for making that sale. My bankruptcy schedules were sworn to on November 5th and they are in evidence here. At that time I didn't give a damn for any interest I had in the Camp Rock property and that is what I thought at the time. Five months and four days later, I sold the property for \$50,000 but I didn't get any money. Eventually \$49,000 was collected by Kleinschmidt. Suddenly the property got good. The 1st of April it was worth a thousand dollars—just what they put in there—because if they hadn't put in that thousand dollars they would have lost it so it was worth a thousand dollars. The 1st of May it was worth two thousand dollars, not \$50,000. It was worth \$50,000 when it was paid for. In other words, the \$49,000—the price that was paid does not really represent the full value of the mine unless you could keep the payments up.

I knew that I owed \$93,000 some time in advance of November 5th. We owed the bank \$20,000. Our rating was about No. 2 here, I think, according to Bradstreet & Dun's, and anybody who can do as much business on \$20,-

(Testimony of Benjamin Franklin Baum)

000 borrowed money is in pretty good shape. I don't remember of owing any \$93,000 for several months before November 5th. I don't know how the books are worked out.

I said I made two trips to the mine. When I went to the mine we had some trouble with the watchman up there which I straightened out. I did not do any physical labor on the mine, any sinking of the shafts. I had some assessment work done by the watchman but I didn't do any of it. I made more than two trips to the mine, but I made two trips. In addition to that I brought the parties together on the sale. After my bankruptcy we had a lawsuit in connection with the mine that lasted a year. That lawsuit was filed in 1935 and I had this interest back in November of 1932.

Mr. Sullivan had the contract with the locators of the mine. Under this agreement (the Stock and Pohl agreement) in the event of the failure of any of the parties to keep up this payment totaling a thousand dollars a month, his interest was to be deemed forfeited. Under this agreement, at the time of my default in August or possibly July of 1931—if the others had carried on the agreement, and had made a profit, I would have been entitled to have something back. What I had in mind when I said that I had some sort of interest that might be worth something but that I did not think it was worth anything at that time was this. There wasn't enough money in the crowd to keep the payments up in the first place. We knew that it had to be sold. The probability of selling it wasn't very bright, and it had to be sold in order for anybody to get any of their money back, and it had to be paid for also,

(Testimony of Benjamin Franklin Baum)

so that it looked like there wasn't any chance at all of that thing working out to anybody's advantage unless you could find somebody with money enough to buy it, which is a chance that really materialized. That is what did happen.

I didn't show this agreement (plaintiff's Exhibit No. 18) to Mr. Parke. He never saw it. I told about it. Of course, unfortunately, Mr. Parke wasn't in very good health. The date of the assignment of my interest to Kleinschmidt is the 23rd of September. On that day I was in Los Angeles. I wasn't doing anything at that time; trying to get myself together. I just lost all my money. After the 23rd of September with reference to this claim—I think it was around November that I found the next person who wanted to buy it. I thought I could sell it to Mr. Messenger. I worked on him for about two months. Pending that time, from September to November, I was willing to talk mining with any prospector in the way of a purchaser, if I thought I could sell it. In other words, I was trying to sell the mine. That was about the only thing that I could find to do.

I have received some of this \$49,000. I don't want to be held to this because I don't know exactly, but I think I received around \$7,000. I received that \$7,000 when it came in, as it was paid. There wasn't any disbursement made until after the mine was paid off, and I think the first payment that I received—I don't know just how much it was now; I imagine Mr. Kleinschmidt has the records. I have got some of it. I mean when I say "the mine was paid off" it was paid off in November. Kleinschmidt finished paying for it in November. You see Kleinschmidt

(Testimony of Benjamin Franklin Baum)

was getting the money from Llewellyn and Evans for it. Kleinschmidt had finished paying for it according to my recollection in 1932, and from that time on I began to receive some money. I think it was in November. I am not sure. There is an assignment to Mr. Baum dated November 15, 1932. That is about when I received the payment in November. There wasn't much discussion about the contract that was made in November, 1932—the assignment. What I really wanted was money but Kleinschmidt couldn't give it to me. Because I was only getting a thousand dollars a month from these people, and he had to apply it on the payment. So he said he would make some satisfactory arrangement with me. So I think I saw him about September—August or September of 1933, and that was when he said, "Well, I am going to make some kind of an agreement." I said, "Well, what kind of an agreement is it? Do I get any money out of it?" He said, "Well, I think it will be satisfactory." There never was any question about how much it would be at all, or anything about it. I never knew how much I was going to get until I got the agreement. I didn't say that some time before that—this time in September, I had asked him for money. In making these deals I asked for \$5,000. That is the only time I ever asked for anything. I didn't ask Kleinschmidt for money several times before the November agreement was made. What I meant to say maybe I quoted myself wrong—but in getting these prospects, and my work instrumental with selling this mine, I said I would prefer to have a cash settlement than any other kind, and I said \$5,000 would be satisfactory, and I naturally thought that would be the same with the Llewellyn deal, and I guess I would have received the \$5,000 if it had been a cash deal, but it

(Testimony of Benjamin Franklin Baum)

wasn't. Instead of that we found out they could only pay a thousand dollars a month.

"THE COURT: When you say 'a cash settlement,' settlement of what?

THE WITNESS: \$5,000 for making the deal.

THE COURT: Oh! And he agreed to give you \$5,000 for making the deal?

THE WITNESS: Oh, yes. I offered several fellows that if they could sell it, and I would have been glad to give it to them, too.

THE COURT: And, in September he told you he was willing to—do I correctly understand you?

THE WITNESS: He said he would make an agreement that would be satisfactory to me.

THE COURT: In September?

THE WITNESS: Yes.

THE COURT: He said that in September. In the meantime he had not given you any money still?

THE WITNESS: Oh, no; no.

THE COURT: Did you ask him what that agreement was, how much that would be?

THE WITNESS: No. I didn't discuss that with him at all.

THE COURT: All right. What was next said after that?

THE WITNESS: After what?

THE COURT: After he had told you that in September?

THE WITNESS: He brought the agreement down here to Los Angeles.

THE COURT: Do you mean this Exhibit 12?

THE WITNESS: Yes, sir.

(Testimony of Benjamin Franklin Baum)

THE COURT: Yes.

THE WITNESS: And he says—

THE COURT: Was it in its present form?

THE WITNESS: Yes; present form. He said, 'Here's this agreement that I have made up. I hope it is satisfactory.' I said, 'Well, it is a little more than satisfactory. However, I would rather have the cash than the agreement.' And I think—

THE COURT: Let me see that Exhibit 12 again.

(Exhibit passed to the court.)

THE COURT: This, of course, is not the original; only a certified copy. Your understanding was, was it not, that you were to have half of that \$39,200?

THE WITNESS: No. My understanding was that I was to have a half of his interest.

THE COURT: Half of the interest of Kleinschmidt?

THE WITNESS: Of Walter.

THE COURT: How much was that interest?

THE WITNESS: Well, there was 20 per cent to come out of it. That leaves 80 per cent. That would be 40 per cent of it.

THE COURT: Yes; something like \$15,000 and something; 40 per cent of the \$39,000. 40 per cent of \$40,000 would be \$16,000.

THE WITNESS: Whatever the profits were. You see, there was a lot of expenses. We had lawsuits all the time, pretty nearly ever since we have had it. I don't know what that has run to. So, I don't know what the profits were.

THE COURT: When did the payments that Mr. Kleinschmidt made to you cease?

THE WITNESS: Well, when they ceased?

(Testimony of Benjamin Franklin Baum)

THE COURT: Yes, when did they cease?

THE WITNESS: When Mr. Turnbull put an attachment on.

THE COURT: I see. Do you recall when that was?

THE WITNESS: No; I don't. I guess it was around February or March of last year."

It is possible I had a certain interest in that contract even after my default. Provided the mine was paid out and all the payments were made, why, I would get that back, when, as and if; that is, that portion of the \$16,000. The way I figured it out was that in September I made the assignment to Kleinschmidt and waived. Then, of course, in November I thought I did not have any interest in the contract as I had assigned my entire interest.

I gave the testimony before the Referee in Bankruptcy on February 13, 1936, mentioned on page 23.

"MR. TURNBULL: 'Q—When you were going through bankruptcy Kleinschmidt didn't know anything about it?

'A—Oh, yes.

'Q—At the time he dealt with you the second time, did you tell him you were through bankruptcy then, when you acquired that interest?

'A—I told him I had been discharged.

'Q—You told him at that time you were free to do business?

'A—Yes. They told me I was free to do business after I filed the bankruptcy.' "

If you have those questions there, I imagine I gave those answers. I haven't any copy of what I said. Mr. Schroeter was the one who told me that I was free to do business. He is the Referee in Bankruptcy, and said that

(Testimony of Benjamin Franklin Baum)

I could start out doing business after I had filed my bankruptcy papers. To the best of my memory, the following questions were asked me and I gave the following answers:

“Q—You were talking about a time back behind the bankruptcy?

‘A—Yes. I am trying to connect it up. After I got the August payment, I had no further work to do but I did see that the August payment was put through for Kleinschmidt at his request. About that time he asked me to make an assignment to him and I said, ‘All right, shall I send it up to you’ and he said, ‘No, I am going down;’ he said that he would come down in September. That is when the assignment was made. I got into my difficulty almost over night. We had no more idea of them filing than anything in the world. The bank stopped our checks over night although we had \$18,000 in the bank and only owed them \$20,000. So Mr. Kleinschmidt was at this time, in October, I think—it was in October I think Sullivan dropped out. He could not make any more payments. I think that is the right time, maybe a month one way or the other.

‘Q—You are still on the first deal?

‘A—Yes, I am connecting it up. So Kleinschmidt came down here in November and he says ‘Will you look after this thing for me as my agent. I have got to sell this property or I am going to lose it.’ And I said, ‘Well, I don’t know who you are going to sell it to but maybe you can.’

‘Q—This was after the bankruptcy?

‘A—Yes, November, 1932. So I had a little office there. I had a room in the Central Building, and I spent prac-

(Testimony of Benjamin Franklin Baum)

tically all of my time there up to the time I finally ran onto Evans who did buy it. I had one fellow that was going to buy it and I took him to Frisco—anyway, it ran from 1932 to 1933 before—

‘Q—Before you made the Evans deal?

‘A—No. I made it in April, 1932.’”

Mr. Sullivan died. Somebody bought his interest, and he got—I don’t know what he paid for it. He did not assign it to Kleinschmidt. Somebody bought his interest. He had about \$3,200 coming, as I remember. Somebody bought it, I think, for about \$2,000; I am not sure. I don’t know the figures on that, and then this fellow was paid \$3,200 by Kleinschmidt. I can’t answer how much I am asserting the balance against the Kleinschmidts now. I think it runs probably around \$3,400. I think \$3,400 is all I have got coming. I am not sure; I can’t be sure of this until—you see, we had some expenses on this trial up here.

RECROSS-EXAMINATION

BY MR. BLANCHE

The payments to me stopped long prior to 1936. They were held up on account of the trial, and I didn’t receive any payments, except \$1,700. That was on account of the Grubl trial. Out of the \$39,000 still due when I became entitled, under this agreement of November 15, 1932, there was a balance to be paid to Mr. Sullivan. A balance of \$3,266—\$3,200 to be paid to Sullivan. There were a great many expenses in connection with various legal items that were had out of the \$39,800. I never became entitled to 50 per cent of that.

(Testimony of Irene Unicume—Frank N. Rush)

IRENE UNICUME,

a witness called on behalf of the defendants, after being first duly sworn, testified substantially as follows:

My name is Mrs. Irene Unicume. I reside at 365 South Cloverdale, Los Angeles. My occupation is secretary to the auditor of Southern California Telephone Company in Los Angeles. I knew Walter Kleinschmidt in his lifetime. I was secretary to the auditor at the time Mr. Kleinschmidt had that position. That was from 1927 to May, 1931. He left Los Angeles in May, 1931. He went to San Francisco. I knew him from 1924, and I was his secretary. His reputation was that he had an excellent reputation in the company.

FRANK N. RUSH,

a witness called on behalf of the defendant, after being first duly sworn, testified substantially as follows:

My name is Frank N. Rush. I reside at 1318 Milan Avenue, South Pasadena. I am vice president and general manager of the Southern California Telephone Company, and have been such since June, 1928. I knew Walter G. Kleinschmidt in his lifetime. I first became associated with him in 1924. My position or occupation at that time was superintendent of traffic for the Southern California Telephone Company in Los Angeles. Mr. Kleinschmidt's occupation at that time was auditor of disbursements. He became auditor of the company in 1927. I will check that to be sure. January, 1937; yes. He was auditor from January, 1927, until 1931, and I became general manager of the company in 1928. So I had an opportunity to observe

(Testimony of Frank N. Rush)

him in my official capacity as general manager as auditor of the company from 1928 to 1931. Mr. Kleinschmidt's reputation in my company and in the community for honesty and integrity was excellent and above reproach.

"MR. WRIGHT: At this time, your Honor, I would like to move that your Honor find in favor of the defendant Margaret D. Kleinschmidt, as administratrix of the estate of Walter G. Kleinschmidt, deceased, on all of the issues in the case; that your Honor grant and find a decree for her with costs upon the ground that the plaintiff has failed to make out and prove the allegations of fraud and conspiracy set forth in the complaint.

I further move that your Honor make and enter a decree in favor of that defendant with costs against the plaintiff, Ernest U. Schroeter, as trustee of the estate of Benjamin F. Baum, a bankrupt.

THE COURT: Well, that is the case, is it not?

MR. TURNBULL: That is the case, your Honor. I would like to be heard.

THE COURT: I am supposed to grant or deny your request.

MR. WRIGHT: I am making that motion for the record, your Honor.

THE COURT: The motion is submitted."

Dated: San Francisco, California, July 17, 1937.

Respectfully submitted,

Pillsbury Madison, Sutro

Attorneys for Margaret D. Kleinschmidt, as Administratrix of the Estate of Walter Granger Kleinschmidt, deceased, Defendant and Appellant.

It appearing to the court that the defendant and appellant Margaret D. Kleinschmidt lodged with the clerk of the above entitled court on May 19, 1937, her proposed statement of evidence under Equity Rule No. 75, and that plaintiff and respondent and defendant and appellant filed herein on July 8, 1937, a stipulation that said proposed statement of evidence above mentioned should be amended as set forth in the stipulation and that this court made its order approving said statement of evidence on July 8, 1937, and this statement being the statement lodged on May 19, 1937, as amended by the stipulation filed on July 8, 1937;

Now, Therefore, this statement is herewith allowed, settled and approved as a full, true and correct statement in narrative and verbatim form of all the testimony produced upon the trial of the above entitled cause.

Dated at Los Angeles, California, this 19th day of July, 1937.

Geo Cosgrave

United States District Judge

[Endorsed]: Filed Jul 19 1937 R. S. Zimmerman,
Clerk By L B Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

SUMMONS

To B. F. Baum and to Kent Blanche, Esq., his attorney:

You and each of you will please take notice that MARGARET D. KLEINSCHMIDT, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, one of the defendants above named, will present her petition for appeal from the decree and judgment in the above entitled cause entered on the 23rd day of February, 1937, to the Honorable George Cosgrave, United States District Judge at Los Angeles, California, on the 19th day of March, 1937, at which time and place you are required to join in said petition for the allowance of said appeal. If you refuse to join in said appeal kindly execute the refusal attached hereto.

Dated: March 19th, 1937.

Pillsbury, Madison & Sutro

Attorneys for defendant, Margaret D. Kleinschmidt, as administratrix, etc.

To whom it may concern:

The undersigned hereby acknowledges that he has received a copy of the above mentioned summons and that he refuses to join with the said Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, one of the defendants above named, in her petition for allowance of appeal from the decree and judgment in the above entitled cause rendered on the 23rd day of February, 1937.

Dated: March 19th, 1937.

B. F. Baum,

By Kent Blanche

His Attorney.

[Endorsed]: Filed Mar 19 1937 R. S. Zimmerman,
Clerk By L B Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

MOTION FOR SEVERANCE AFTER REFUSAL
TO JOIN IN APPEAL

Now comes MARGARET D. KLEINSCHMIDT, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, one of the defendants in the above entitled cause, and shows to the court that she has filed herein her assignment of errors and petition for allowance of appeal from the decree and judgment entered in the above entitled cause on the 23rd day of February, 1937; that a request to join in said appeal has been served upon B. F. Baum, who is the only codefendant in said cause against whom said decree and judgment has been rendered, and that he has failed, neglected and refused to join in said appeal.

Wherefore, said defendant herein prays that the court make an order of severance from her said codefendant for the purpose of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree and judgment entered herein on the 23rd day of February, 1937, and for such other and further relief as may be proper in the premises.

Dated: March 19th, 1937.

Pillsbury Madison & Sutro

Attorneys for defendant, Margaret D. Kleinschmidt,
as administratrix, etc.

[Endorsed]: Filed Mar 19 1937 R. S. Zimmerman,
Clerk. By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER OF SEVERANCE

It appearing to the court that B. F. Baum, a codefendant in the above entitled cause, has been duly notified and requested by MARGARET D. KLEINSCHMIDT, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, to join in her petition for appeal from the decree and judgment of the above entitled court entered on the 23rd day of February, 1937, and that said B. F. Baum and said Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, are the only defendants in said cause against whom said decree and judgment has been rendered, and said B. F. Baum having failed, neglected and refused to join in said appeal, the said Margaret D. Kleinschmidt, as administratrix aforesaid is hereby granted the right to appeal alone from said decree and judgment without joining said B. F. Baum as an appellant.

Dated: March 19th, 1937.

Geo Cosgrave
United States District Judge

[Endorsed]: Filed Mar. 19, 1937. R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk

In the District Court of the United States for the
Southern District of California,
Central Division

_____)
ERNEST U. SCHROETER, as)
Trustee in Bankruptcy of the Es-)
tate of B. F. Baum, Bankrupt,)
Plaintiff,)
vs.)
B. F. BAUM, MARGARET D.) Equity No. 959-C
KLEINSCHMIDT, as Admin-)
istratrix of the Estate of Walter)
Granger Kleinschmidt, Deceased,)
MARGARET D. KLEIN-)
SCHMIDT, individually, JOHN)
DOE, RICHARD ROE, FIRST)
COMPANY, a corporation, SEC-)
OND COMPANY, a corporation,)
Defendants.)
_____)

PETITION FOR APPEAL

To the Honorable Judges of the District Court of the
United States in and for the Southern District of
California, Central Division:

Petitioner, the above named MARGARET D. KLEIN-
SCHMIDT, as administratrix of the estate of Walter
Granger Kleinschmidt, deceased, considering herself ag-
grieved by the final order, judgment and decree of the
above entitled court, awarding to the above named plain-
tiff a decree and judgment for the sum of \$10,880 against
B. F. Baum and petitioner, as administratrix of the es-
tate of Walter Granger Kleinschmidt, deceased, which
said final decree and judgment was made and entered here-

in on the 23rd day of February, 1937, does hereby petition for an appeal from the said decree and judgment to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons and upon each and all of the grounds set forth in the assignment of errors filed herewith, and prays that her appeal may be allowed and a citation issued directed to said appellee, Ernest U. Schroeter, as trustee in bankruptcy of the estate of B. F. Baum, a bankrupt, commanding him to appear before the said United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice in the premises, and that a transcript of the record, proceedings and evidence in the above entitled suit duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and for such other, further and different order of relief as to this honorable court may seem just in the premises.

Margaret D. Kleinschmidt as administratrix of the estate of Walter Granger Kleinschmidt, Deceased, Petitioner.

By Pillsbury, Madison & Sutro
Her Attorneys

The foregoing appeal is hereby allowed upon the filing herein by said petitioner of a cost bond conditioned as required by section 1000 of the Revised Statutes of the United States, with sufficient sureties to be approved by this court in the sum of \$250.00.

Dated at Los Angeles in said district this 19th day of March, 1937.

Geo Cosgrave
United States District Judge

[Endorsed]: Filed Mar 19 1937 R. S. Zimmerman,
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Now comes MARGARET D. KLEINSCHMIDT, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, one of the defendants above named, and assigns the following and each of them as errors on which she will rely upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain decree and judgment of the above entitled court made and entered herein on the 23rd day of February, 1937:

I

The District Court erred in denying this defendant's motion for findings in her favor on each and every issue presented by the pleadings.

II

The District Court erred in denying this defendant's motion for a decree and judgment in her favor.

III

The District Court erred in granting plaintiff's motion for a decree and judgment in his favor.

IV

The District Court erred in the making of the following findings of fact which were adopted by it in the making of its decree and judgment, to wit:

(a) "The court finds that the plaintiff, Ernest U. Schroeter, was at the time of the filing of this bill in equity, and still is, the duly elected, qualified and acting

trustee in bankruptcy of and for the estate of B. F. Baum, Bankrupt. That the plaintiff is and was a resident and is and was a citizen of the State of California, residing in the City of Los Angeles, County of Los Angeles, and in the Southern District of California. That the defendant B. F. Baum, whose full name is Benjamin F. Baum, was duly adjudicated a bankrupt on the 6th day of November, 1931, and on the 6th day of November, 1931 this court duly and regularly made, gave and entered its order adjudicating Benjamin F. Baum a bankrupt within the meaning and purview of the National Bankruptcy Act of 1898 and the amendments thereto. That at the time of the making of such adjudication Benjamin F. Baum, the bankrupt, filed his schedules in bankruptcy wherein under oath he purported to set forth in Schedule B a list of all of his assets, real and personal, but which did not disclose the mining property hereinafter described. That at the time of the making of said schedules and the filing thereof on the 6th day of November, 1931, at the time of the making of the decree of adjudication in bankruptcy as to said Benjamin F. Baum, said Benjamin F. Baum was the owner of an interest in a certain group of mining claims with water rights appertaining thereto, commonly known as the Camp Rock Mining property and also as Camp Rock Mines, situate in the Belleville Mining District in the County of San Bernardino, State of California. That the said property was and is more particularly known and described in the plaintiff's bill in equity as follows:

Royal Placer Claim No. 1, as per description recorded in Book 171, page 64, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 2, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 3, as per description recorded in Book 171, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 4, as per description recorded in Book 179, page 65, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 5, as per description recorded in Book 171, page 66, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 6, as per description recorded in Book 171, page 67, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 7, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 8, as per description recorded in Book 171, page 68, Mining Records, County of San Bernardino, California.

Royal Placer Claim No. 9, as per description recorded in Book 171, page 69, Mining Records, County of San Bernardino, California.

Gold Junction Quartz Claim, as per description recorded in Book 168, page 189, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 1, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California.

Gold Bar Claim No. 2, as per description recorded in Book 168, page 183, Mining Records, County of San Bernardino, California;

all of said property being situate in the County of San Bernardino, in the Belleville Mining District, State of California.

That all the mining property referred to is situate in San Bernardino County, and that the bankruptcy of Benjamin F. Baum was filed at the place of his residence, at Los Angeles, California, and the administration of the estate of Benjamin F. Baum was administered through this court at Los Angeles, California, being referred to a Referee appointed, sitting and acting for and in the County of Los Angeles, California."

(b) "That at the time of the making of said schedules and the filing thereof on the 6th day of November, 1931, at the time of the making of the decree of adjudication in bankruptcy as to said Benjamin F. Baum, said Benjamin F. Baum was the owner of an interest in a certain group of mining claims with water rights appertaining thereto, commonly known as the Camp Rock Mining property and also as Camp Rock Mines, situate in the Belleville Mining District in the County of San Bernardino, State of California."

(c) "The court finds that at the time of the adjudication of Benjamin F. Baum as a bankrupt on the 6th day of November, 1931, Benjamin F. Baum scheduled debts in excess of \$90,000.00, and that in contemplation of said bankruptcy proceedings, which were voluntary on the part of Benjamin F. Baum, he did, on the 12 day of September, 1931, and less than sixty days

prior to the filing of his bankruptcy on November 6, 1931, and while he was indebted to creditors in a sum in excess of \$90,000.00, he, the said Benjamin F. Baum, entered into an agreement with Walter Granger Kleinschmidt, who was then a person jointly interested with him in the said mining property hereinbefore described, the Camp Rock Mining property.

That at said time it was agreed by and between the said Benjamin F. Baum and said Walter Granger Kleinschmidt that Benjamin F. Baum should assign his interest in and to said mining property and his, Benjamin F. Baum's contractual rights therein and thereto, and convey the same to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt agreed that he would hold the same as the property of Benjamin F. Baum, to and until such time as Benjamin F. Baum should be free of entanglements and obligations of his, the said Benjamin F. Baum's, creditors. That said Walter Granger Kleinschmidt then and there agreed to reconvey said property at a date in the future and at a time when said Benjamin F. Baum should request the same, and at a time when and after Benjamin F. Baum should be free of and from the obligations of his, Benjamin F. Baum's, creditors. That on September 12, 1931, Benjamin F. Baum made and delivered to Walter Granger Kleinschmidt an instrument purporting to assign to Kleinschmidt his interest in the mining property hereinbefore described.

The court finds that thereafter proceedings for the administration of Benjamin F. Baum as a bankrupt were had, that Benjamin F. Baum did not disclose to the trustee in bankruptcy in his estate, to-wit, Ernest U.

Schroeter, nor to the Referee in Bankruptcy before whom the bankruptcy proceeding was pending, nor to the creditors of Benjamin F. Baum, that Benjamin F. Baum had an interest or had had any interest in and to the said Camp Rock mining property hereinbefore described, or any contractual or other interest therein or thereto.

That the total assets of the estate of Benjamin F. Baum as administered was less than the sum of \$800.00, and there was paid to the creditors of Benjamin F. Baum, through the medium of his bankruptcy, a dividend of less than one per cent on the dollar of such obligations of Benjamin F. Baum. That Benjamin F. Baum petitioned the court for his discharge, and on the 4th day of April, 1932, the court duly made, gave and entered its order discharging Benjamin F. Baum from his debts, as a bankrupt. The court finds that in the month of February, 1932 and during the time of the administration of the estate of Benjamin F. Baum as a bankrupt, Benjamin F. Baum made, executed and delivered to Walter Granger Kleinschmidt a quitclaim deed attempting to convey and purporting to convey the interest of the bankrupt, Benjamin F. Baum, in and to the Camp Rock Mining property hereinbefore described, to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt accepted said deed and the same was recorded with the County Recorder of San Bernardino County. That none of said facts was known at said time to the trustee in bankruptcy, nor to the court, nor to the creditors of Benjamin F. Baum. That no order of court was obtained permitting the conveyance of said property. That Benjamin F. Baum informed Walter Granger Kleinschmidt, during the pendency of his bankruptcy administration,

that he was a bankrupt, and the said Walter Granger Kleinschmidt knew, during the period of administration of the estate of Benjamin F. Baum, that Benjamin F. Baum had been adjudicated a bankrupt and that his status was that of a bankrupt."

(d) "The court finds that at the time of the adjudication of Benjamin F. Baum as a bankrupt on the 6th day of November, 1931, Benjamin F. Baum scheduled debts in excess of \$90,000.00, and that in contemplation of said bankruptcy proceedings, which were voluntary on the part of Benjamin F. Baum, he did, on the 12 day of September, 1931, and less than sixty days prior to the filing of his bankruptcy on November 6, 1931, and while he was indebted to creditors in a sum in excess of \$90,000.00, he, the said Benjamin F. Baum, entered into an agreement with Walter Granger Kleinschmidt, who was then a person jointly interested with him in the said mining property hereinbefore described, the Camp Rock Mining property.

That at said time it was agreed by and between the said Benjamin F. Baum and said Walter Granger Kleinschmidt that Benjamin F. Baum should assign his interest in and to said mining property and his, Benjamin F. Baum's, contractual rights therein and thereto, and convey the same to Walter Granger Kleinschmidt. That Walter Granger Kleinschmidt agreed that he would hold the same as the property of Benjamin F. Baum, to and until such time as Benjamin F. Baum should be free of entanglements and obligations of his, the said Benjamin F. Baum's, creditors. That said Walter Granger Kleinschmidt then and there agreed to reconvey said property at a date in the future and at a time when said Ben-

jamin F. Baum should request the same, and at a time when and after Benjamin F. Baum should be free of and from the obligations of his, Benjamin F. Baum's, creditors. That on September 12, 1931, Benjamin F. Baum made and delivered to Walter Granger Kleinschmidt an instrument purporting to assign to Kleinschmidt his interest in the mining property hereinbefore described."

(e) "The court finds that the estate of Benjamin F. Baum was closed and the administration thereof closed in the year 1932, without there being disclosed to the court or to the trustee of said estate, or to the creditors thereof, any information or knowledge concerning the interest of Benjamin F. Baum in and to the said Camp Rock Mining properties hereinbefore described, nor concerning the purported conveyances of the interest of the bankrupt B. F. Baum therein and thereto.

The court finds that in the month of November, 1931 and thereafter, Benjamin F. Baum continued to endeavor to sell the mining properties known as the Camp Rock Mining property hereinbefore described, acting on behalf of himself and Walter Granger Kleinschmidt and at the special instance and request of Walter Granger Kleinschmidt, and four days after the granting of the discharge in bankruptcy to Benjamin F. Baum, Benjamin F. Baum did, to-wit, on the 8th day of April, 1932, succeed in obtaining a purchaser for said property who agreed in writing to pay for said Camp Rock Mining properties the total sum of Fifty Thousand Dollars (\$50,000.00); that said purchaser consisted of Frank Llewellyn and Charles Evans.

The court finds that thereafter, by an agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum on one part, and Frank Llewellyn on the other, One Thousand Dollars (\$1,000.00) which had been paid on account of but not in full of the Fifty Thousand Dollars purchase price, was credited to Frank Llewellyn, and Charles Evans as a purchaser was eliminated and a new agreement was entered into and executed between the parties in writing, to-wit, Walter Granger Kleinschmidt as vendor and Frank Llewellyn as purchaser, under the terms of which Walter Granger Kleinschmidt purported to sell, and Frank Llewellyn agreed to buy and pay for the said Camp Rock Mining properties at an agreed price of Forty-nine Thousand Dollars (\$49,000.00). That said instrument was dated the 10 day of May, 1932.

The court finds that all of the Forty-nine Thousand Dollars provided for under the terms of the last mentioned agreement has been paid to Walter Granger Kleinschmidt and the estate of Walter Granger Kleinschmidt, Deceased.

The court finds that on the 15th day of November, 1932, Walter Granger Kleinschmidt made, executed and delivered to B. F. Baum an assignment in writing wherein and whereby said Walter Granger Kleinschmidt agreed to pay to Benjamin F. Baum fifty per cent of the amount of moneys received by him from the sale or lease of the Camp Rock Mining properties. The court finds that Walter Granger Kleinschmidt received a total of Forty-nine Thousand Dollars from the sale of said Camp Rock Mining properties. The court finds that the said conveyance and assignment was made by Walter Granger

Kleinschmidt after Benjamin F. Baum had obtained his discharge in bankruptcy from this court in the matter of the bankruptcy proceedings of Benjamin F. Baum and after he had freed himself from the obligations to his, Benjamin F. Baum's creditors, and the said conveyance was made in compliance with, pursuant to and in accordance with the original agreement made between Walter Granger Kleinschmidt and Benjamin F. Baum respecting the return to Benjamin F. Baum of his interests in the Camp Rock Mining property."

(f) "The court finds that it was contemplated between Benjamin F. Baum and Walter Granger Kleinschmidt that there should be paid out of the sales price of the Camp Rock Mining properties to one Frank Murray and his associates, twenty per cent of the profits of the Camp Rock mining deal. That the said Camp Rock mining deal consisted of the acquiring of the Camp Rock Mining properties from Henry C. Stock and Charles Pohl at a purchase price of Twenty-one Thousand, Eight Hundred Dollars (\$21,800.00), the sale thereof for Forty-nine Thousand Dollars (\$49,000.00), leaving a profit of Twenty-seven Thousand, Two Hundred Dollars (\$27,-200.00), and that there should be paid to said Murray twenty per cent of Twenty-seven Thousand, Two Hundred Dollars, or Five Thousand, Four Hundred and Forty Dollars (\$5,440.00); that there should be given a credit, therefore, to the defendants in this proceeding for the Five Thousand, Four Hundred Forty Dollars (\$5,440.00) to be paid to Murray, leaving Twenty-one Thousand, Seven Hundred Sixty Dollars (\$21,760.00); that Twenty-one Thousand, Seven Hundred and Sixty Dollars (\$21,-760.00) is the amount received by Walter Granger Klein-

schmidt from the sale of the Camp Rock property; that one-half thereof is the sum of Ten Thousand, Eight Hundred and Eighty Dollars (\$10,880.00).

And that therefore, notwithstanding the recital in the assignment of November 15, 1932, that Kleinschmidt was to pay one-half of the money received by him, to-wit, the assignment from Walter Granger Kleinschmidt to Benjamin F. Baum, the court finds that there should be credited to the defendants the said twenty per cent of the profits to be paid to Murray, and that there should also be deducted the amount of money which Walter Granger Kleinschmidt paid to the persons from whom he purchased the mining property, to-wit, Henry C. Stock and Charles Pohl, to-wit, the sum of Twenty-one Thousand Eight Hundred Dollars (\$21,800.00), and the court finds that there was paid to Walter Granger Kleinschmidt the amount remaining, Twenty-one Thousand, Seven Hundred Dollars (\$21,700.00), and that fifty per cent thereof is the sum of Ten Thousand, Eight Hundred Eighty Dollars (\$10,880.00).

The schedule of payments, therefore, is as follows:

To Frank Murray—twenty per cent of the profit, \$27,200.00	\$ 5,440.00
To Walter Granger Kleinschmidt—the amount remaining after the deduction of the payment to the original vendors Henry C. Stock and Charles Pohl and the payment to Murray	21,760.00

That the amount agreed to be paid, therefore, by Walter Granger Kleinschmidt to B. F. Baum is one-half of Twenty-one Thousand, Seven Hundred Sixty Dollars (\$21,760.00), or the sum of.....\$10,880.00

The court finds that none of said sum has been paid by Walter Granger Kleinschmidt, nor by the Estate of Walter Granger Kleinschmidt, nor by Margaret D. Kleinschmidt as Administratrix of the Estate of Walter Granger Kleinschmidt, to the plaintiff, nor to the Estate of Benjamin F. Baum, a bankrupt, and all thereof is due, owing and unpaid, and that there exist no credits, nor offsets, to which the defendants or any of them are or ought to be entitled."

(g) "The court finds that it was contemplated between Benjamin F. Baum and Walter Granger Kleinschmidt that there should be paid out of the sales price of the Camp Rock Mining properties to one Frank Murray and his associates, twenty per cent of the profits of the Camp Rock mining deal."

(h) "The court finds that for more than sixty days continuously prior to the 6th of November, 1931, Benjamin F. Baum was insolvent. The court finds that the trustee in bankruptcy of the estate of Benjamin F. Baum and the creditors thereof did not discover, nor did it come to their attention, that Benjamin F. Baum had ever had any interest in the Camp Rock Mining property hereinbefore described, until on or about the 3rd day of January, 1936. Thereupon, in proceedings duly had by a creditor to reopen the estate of Benjamin F. Baum and for a rereference thereof for further administration, this court duly made its order on the 3rd day of January, 1936, which order was and is in words, letters and figures as follows, to-wit, a copy:

'IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 17686-M

In the Matter of)
) ORDER RE-OPENING
BENJAMIN F. BAUM,) BANKRUPTCY
) PROCEEDINGS AND
Bankrupt) RE-REFERENCE

'A petitioner herein having filed his petition praying for the re-opening of this estate and its re-reference, on the ground that there is property which was not disclosed to the Bankruptcy Court nor to the Trustee thereof nor to the creditors and alleging that the same should be recovered and administered upon and good cause therefor appearing, it is hereby

'ORDERED, that the estate of the above named bankrupt be, and the same hereby is, re-opened for further proceedings herein and, it is further

'ORDERED, that this matter be, and it hereby is, re-referred to Referee in Bankruptcy, James L. Irwin, with instructions to elect a Trustee, examine the bankrupt, and take such other appropriate proceedings as are necessary for the administration of the property of the estate.

Los Angeles, California, January 3, 1936.

Paul J. McCormick
Judge

That thereafter an order was duly made, given and rendered re-electing and reappointing Ernest U. Schroeter as trustee in bankruptcy of the estate of B. F. Baum on reopening, and said Ernest U. Schroeter, the plaintiff, prior to the commencement of this action and prior to the filing of his creditor's claim in the matter of Walter Granger Kleinschmidt, Deceased, qualified in the manner provided by law and in the manner provided for in the order so appointing him and electing him on reopening as trustee, and said plaintiff has been at all times, therefore, the duly elected, qualified and acting trustee in bankruptcy of the estate of Benjamin F. Baum, Bankrupt."

(i) "The court finds that for more than sixty days continuously prior to the 6th of November, 1931, Benjamin F. Baum was insolvent. The court finds that the trustee in bankruptcy of the estate of Benjamin F. Baum and the creditors thereof did not discover, nor did it come to their attention, that Benjamin F. Baum had ever had any interest in the Camp Rock Mining property hereinbefore described, until on or about the 3rd day of January, 1936."

VI

The District Court erred in adopting its conclusions of law upon which said decree and judgment of the above entitled court is based in that said conclusions are not supported but are contrary to the findings of fact entered herein and to the evidence upon which the same were based.

VII

The District Court erred in adopting said decree and judgment in that said decree and judgment denied this

defendant the relief prayed for in her answer to the bill of complaint herein, namely, the dismissal of the bill of complaint with costs.

VIII

The District Court erred in overruling each and every of this defendant's objections and sustaining each and every of plaintiff's objections upon the trial of the cause herein.

IX

The District Court erred in denying the motion of this defendant to dismiss the bill of complaint as against her on the ground that the same was not supported and was contrary to the evidence adduced herein, to the denial of which motion timely exception was noted by said defendant.

X

The District Court erred in making said decree and judgment in the amount of \$10,880 instead of the sum of \$2,200.00.

XI

The District Court of the United States for the Southern District of California did not have jurisdiction of the parties to the action in that no diversity of citizenship existed between the plaintiff and the defendant, Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased.

XII

The District Court of the United States for the Southern District of California did not have jurisdiction of the subject matter of the action in that the bill of complaint and the evidence in said case shows that no diversity of citizenship existed between the plaintiff in said action and the defendants in said action.

Now, Therefore, in order that the foregoing assignments may be and appear on record, this defendant presents the same, and prays that said assignments may be filed and that such disposition may be made thereof as is in accordance with the laws of the United States in that behalf made and provided, and prays that said decree and judgment herein be reversed, and that the District Court of the United States for the Southern District of California be directed to enter a decree in favor of this defendant in accordance with the prayer of her answer to the bill of complaint on file herein, or that the amount of said decree and judgment be reduced to the sum of \$2200.00 as may be meet and proper in the premises.

Dated: March 19th, 1937.

Pillsbury Madison & Sutro
Attorneys for defendant, Margaret D. Kleinschmidt.
as administratrix, etc.

[Endorsed]: Filed Mar 19 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, MARGARET D. KLEINSCHMIDT, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, as principal, and PACIFIC INDEMNITY COMPANY, a corporation organized and existing under the laws of the State of California, as surety, are held and firmly bound unto Ernest U. Schroeter, as trustee in bankruptcy of the estate of B. F. Baum, a bankrupt, in the full and just sum of \$250.00, to be paid to the said Ernest U. Schoeter, as trustee in bankruptcy of the estate of B. F. Baum, a bankrupt, his certain attorney, executor, administrator or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 19th day of March, in the year of our Lord, one thousand nine hundred and thirty-seven.

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division, in a suit pending in said court, between Ernest U. Schroeter, as trustee in bankruptcy of the estate of B. F. Baum, a bankrupt, plaintiff, and B. F. Baum, Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, et al., defendants, a decree and judgment was rendered against the defendants B. F. Baum and Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased; and the said defendant, Margaret D.

Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, having obtained from said court an order allowing an appeal to reverse the decree and judgment in the aforesaid suit, and a citation directed to the said Ernest U. Schroeter, as trustee in bankruptcy of the estate of B. F. Baum, a bankrupt, citing and admonishing him to be and appear in a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now the condition of the above obligation is such that the said Margaret D. Kleinschmidt, as administratrix of the estate of Walter Granger Kleinschmidt, deceased, shall prosecute her appeal to effect and answer for damages and costs if she fail to make her plea good, then the above obligation to be void else to remain in full force and virtue.

Margaret D Kleinschmidt

As Administratrix of the Estate of Walter Granger Kleinschmidt, Deceased.

PACIFIC INDEMNITY COMPANY,

By J. W. Maynard Jr.

Its Attorney in Fact.

STATE OF CALIFORNIA,)

) ss.

County of Los Angeles)

On this 19th day of March in the year one thousand nine hundred and 37 before me, ATALA M. CARTER a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. W. MAYNARD, JR. known to me to be

the duly authorized Attorney-in-Fact of PACIFIC INDEMNITY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said J. W. MAYNARD, JR acknowledged to me that he subscribed the name of PACIFIC INDEMNITY COMPANY, thereto as surety and his own name as Attorney-in-Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

Atala M. Carter

Notary Public in and for LOS ANGELES County,
State of California.

My Commission Expires May 28, 1938.

Examined and recommended for approval as provided in Rule 28 of the District Court.

Pillsbury, Madison & Sutro
Attorneys for defendant, Margaret D. Klein-
schmidt, as administratrix, etc.

I hereby approve the foregoing bond.

Dated: March 19th, 1937.

Geo Cosgrave
United States District Judge

[Endorsed]: Filed Mar 19 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON
APPEAL FROM DECREE

To R. S. Zimmerman, Clerk of the above entitled court:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal from the decree heretofore allowed in the above entitled proceeding, and to include in said transcript the following:

1. Bill of complaint;
2. Answer of defendant, Margaret D. Kleinschmidt, to the bill of complaint;
3. Amendment to answer of defendant, Margaret D. Kleinschmidt, to bill of complaint;
4. Minute order denying motion to dismiss;
5. Findings of fact and conclusions of law;
6. Judgment and decree;
7. Statement of evidence, as required by Equity Rule 75, as hereafter approved by the above entitled court;
8. Summons to join in appeal;
9. Motion for severance after refusal to join in appeal;

10. Order of severance;
11. Petition for appeal from judgment and decree, and order allowing appeal;
12. Assignment of errors thereon;
13. Bond on appeal;
14. Citation on appeal;
15. This praecipe;
16. Clerk's certificate.

Dated this 19th day of May, 1937.

Pillsbury, Madison & Sutro
Attorneys for Defendant and Appellant,
Margaret D. Kleinschmidt

[Endorsed]: Filed May 24 1937 R. S. Zimmerman,
Clerk By L. B. Figg Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 190 pages, numbered from 1 to 190 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; answer; amendment to answer; findings of fact and conclusions of law; judgment and decree; statement of evidence; summons to join in appeal; motion for severance after refusal to join in appeal; order of severance; petition for appeal and order allowing appeal; assignment of errors; bond on appeal, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ _____ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of September, in the year of Our Lord One Thousand Nine Hundred and Thirty-seven and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.